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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 880099

JOSEPH E. HURD, et al.,

Appellants,

v.

BENJAMIN W. WATKINS, et al.,

Appellees.

JOINT APPENDIX

Conway H. Sheild, III
Robyn Hylton Hansen
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& KELLY, P.C.
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Watkins, et al.

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City Attorney
City of Poquoson
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(804) 868-9900

Counsel for Appellee -
City of Poquoson

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS,

FRANK H. WATKINS,

ELSIE W. POOLE,

VERNIE LEE W. ELLSWICK

and

FRANCIS WATKINS

Complainants

vs. IN CHANCERY NO.

JOSEPH E. HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

ANNETTE HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

PETER H. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

PEGGY L. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

GUY C. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

KATHRYN B. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

PERCY SMITH
209 Hilton Terrace
Newport News, VA 23601

and

EDYTHE SMITH
209 Hilton Terrace
Newport News, VA 23601

Respondents

BILL OF COMPLAINT

To the Honorable C. Duane Holloway, Judge:

AMES W. ELLIOTT
ATTORNEY AT LAW
OST OFFICE BOX 723
AFTON, VIRGINIA 23692

Your Complainants, Benjamin W. Watkins, Frank H. Watkins, Elsie W. Poole, Vernie Lee W. Ellswick and Francis Watkins, respectfully represent as follows:

1. That they are all of the heirs at law of William Leroy Watkins, deceased.

2. That William Leroy Watkins died intestate, seized and possessed of a certain tract of land of approximately 2.5 acres located in the City of Poquoson, Virginia, hereinafter for convenience referred to as the "Watkins' property".

3. That said "Watkins' property" is totally landlocked having no access to or from any roadway and without any means of ingress and egress.

4. That said "Watkins' property" is bordered by Holloway Forrest subdivision.

5. That upon the creation of Holloway Forrest subdivision, a parcel being 50' in width was allocated and marked "Reserved" on the plat of said subdivision as recorded in the Clerk's Office of this Court in Plat Book 7, at page 119, which parcel is more particularly described as follows:

> All those certain lots, part-lots, pieces or parcels of land fronting one hundred feet (100') on the northerly side of Sir Ralph Lane, lying and being in the City of Poquoson, Virginia, shown and designated as a parcel marked "Reserved" on that certain plat entitled, "Subdivision of Holloway Forrest, Poquoson, Virginia", made by Baldwin and Gregg and duly recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 7, page 119, to which reference is here made; said parcel lying between Lots 31 and 32 on said plat.

6. That said "Reserved" parcel provided the only access to the property of your Complainants connecting the "Watkins' property" to Sir Ralph Lane.

7. That Holloway Forrest subdivision was owned by Edbar Estates Corporation, which was dissolved on or about June 1, 1979.

8. That the Respondents, Percy Smith and Edythe Smith, are the trustees in dissolution of said corporation.

ES W. ELLIOTT
TORNEY AT LAW
OFFICE BOX 723
ON, VIRGINIA 23692

245-286)

9. That the Respondents, Percy Smith and Edythe Smith conveyed by Special Warranty deed dated April 20, 1983, recorded in the Clerk's Office of this Court in Deed Book 377, at page 331, the entire "Reserved" parcel described hereinabove to the Respondents, Joseph E. Hurd and Annette Hurd.

10. That the Respondents, Joseph E. Hurd and Annette Hurd, thereafter conveyed by deed dated October 10, 1983, recorded in the Clerk's Office of this Court in Deed Book 390 at page 523, a portion of said "Reserved" parcel being approximately 11.5 feet in width and as more particularly shown on a plat recorded in the aforesaid Clerk's Office in Plat Book 9, at page 623, to the Respondents, Peter H. Carr and Peggy L. Carr.

11. That the Respondents, Joseph E. Hurd and Annette Hurd, have by contract dated April 7, 1984, agreed to convey the remainder of said "Reserved" parcel to the Respondents, Guy C. Chamberlain and Kathryn B. Chamberlain.

12. That a constructive trust was created for the benefit of your Complainants at the time of the creation of Holloway Forrest subdivision wherein a 50' strip of land was reserved to provide access to the "Watkins' property".

13. That the Respondents, Percy Smith and Edythe Smith, conveyed the aforesaid "Reserved" parcel fraudulently and in total disregard of the rights of your Complainants and without their knowledge or consent.

14. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr, obtained title to said "Reserved" parcel through fraud and misrepresentation and hold said property subject to the previously established constructive trust.

15. That, after having received notice of said constructive trust, and of your Complainants' intentions to seek enforcement of said trust, the Respondents, Joseph E. Hurd and Annette Hurd, in a gross and wantonly negligent manner without any regard for the rights of your Complainants contracted to sell the remainder of said "Reserved" parcel to the Respondents, Guy C. Chamberlain and Kathryn B. Chamberlain.

WHEREFORE, as your Complainants are without remedy save in a

ES W. ELLIOTT
TORNEY AT LAW
OFFICE BOX 723
N, VIRGINIA 23692

Court of Equity, they pray as follows:

A. That the deed dated April 20, 1983 from Smith to Hurd be set aside and voided;

B. That the deed dated October 10, 1983 from Hurd to Carr be set aside and voided;

C. That the Respondents, Joseph E. Hurd and Annette Hurd, be enjoined from in anyway disposing of, selling or transferring the remainder of said "Reserved" parcel;

D. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr be ordered to convey title to the said "Reserved" parcel to the City of Poquoson, Virginia, for dedication as a city roadway.

E. That your Complainants be awarded attorney's fees and their costs in this behalf expended;

F. That your Complainants be granted such other further and general relief as the nature of their case may require and to equity shall seem meet.

BENJAMIN W. WATKINS
FRANK H. WATKINS
ELSIE W. POOLE
VERNIE LEE W. ELLSWICK
FRANCIS WATKINS

By _____
Of Counsel

_____ p.q.

JAMES W. ELLIOTT
2314 Route 17
Post Office Box 723
Grafton, VA 23692

W. ELLIOTT
NEY AT LAW
FICE BOX 723
VIRGINIA 23692

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS,

FRANK H. WATKINS,

ELSIE W. POOLE,

VERNIE LEE W. ELLSWICK

and

FRANCIS WATKINS

Complainants
IN CHANCERY NO. 6286

vs.

JOSEPH E. HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

ANNETTE HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

PETER H. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

PEGGY L. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

GUY C. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

KATHRYN B. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

PERCY SMITH
209 Hilton Terrace
Newport News, VA 23601

and

EDYTHE SMITH
209 Hilton Terrace
Newport News, VA 23601

Respondents

LIS PENDENS

KNOW ALL MEN THAT WE, the Complainants in the cause described

JAMES W. ELLIOTT
ATTORNEY AT LAW
POST OFFICE BOX 723
GRAFTON, VIRGINIA 23692

above, give notice of lis pendens, by this memorandum filed in the Clerk's Office of the Circuit Court of York County this 26th day of June, 1984, which sets forth the following:

There is now pending in the Circuit Court of York County a certain cause by the Complainants above against the Defendents above, the object of which is to set aside a Deed dated April 20, 1983 and recorded in the Clerk's Office for the Circuit Court of York County in Deed Book 337, at page 331, which purports to convey sole title in the real estate described herein from Respondents, Percy Smith and Edythe Smith to the Respondents Joseph E. Hurd and Annette Hurd, said property being described as follows:

> All those certain lots, part-lots, pieces or parcels of land fronting one hundred feet (100') on the northerly side of Sir Ralph Lane, lying and being in the City of Poquoson, Virginia, shown and designated as a parcel marked "Reserved" on that certain plat entitled, "Subdivision of Holloway Forrest, Poquoson, Virginia", made by Baldwin and Gregg and duly recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 7, page 119, to which reference is here made; said parcel lying between Lots 31 and 32 on said plat.
>
> And being a portion of Lot 31 and of Lot 32, Holloway Forrest Subdivision, City of Poquoson, Virginia.

The names of the persons whose estates are intended to be affected by the pending suit are the Respondents named herein.

Given under my hand this 26th day of June, 1984.

BENJAMIN W. WATKINS
FRANK H. WATKINS
ELSIE W. POOLE
VERNIE LEE W. ELLSWICK
FRANCIS WATKINS

By _____
Of Counsel

6

JAMES W. ELLIOTT
ATTORNEY AT LAW
POST OFFICE BOX 723
GRAFTON, VIRGINIA 23692

BOOK 399 PAGE 208

COMMONWEALTH OF VIRGINIA
COUNTY OF YORK, to-wit:

I hereby certify that the foregoing instrument was signed and acknowledged before me, the undersigned Notary Public, in my aforesaid jurisdiction by James W. Elliott on this 26th day of June, 1984.

My commission expires: November 28, 1987.

Janet N. Beason
Notary Public

JAMES W. ELLIOTT, p.q.
2314 Route 17
Post Office Box 723
Grafton, VA 23692

VIRGINIA: County of York to-wit:
In the Clerk's Office of the Circuit Court for the County of York, the 26th day of June, 1984
This deed was presented with the certificate annexed and admitted to record at 2:40 o'clock PM.
Teste: Edith M. Elliott, Clerk
By Nancy B. Kane Deputy Clerk

TESTE:
EDITH M. ELLIOTT
CLERK CIRCUIT COURT
COUNTY OF YORK, VA.
By Nancy B. Kane

JAMES W. ELLIOTT
ATTORNEY AT LAW
POST OFFICE BOX 723
GRAFTON, VIRGINIA 23692

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al, :

Complainants, :

v. : In Chancery No.

JOSEPH E. HURD, et al, :

Respondents. :

O R D E R

THIS DAY came the complainants by counsel, and it appearing to the court that Guy C. Chamberlain and Kathryn B. Chamberlain, respondents herein, are no longer under contract to purchase the property in dispute in this litigation, they having vacated the premises, upon motion of the complainants, it is ORDERED that Guy C. Chamberlain and Kathryn B. Chamberlain be, and they hereby are non-suited as defendants in this litigation.

This order is effective forthwith.

ENTERED this 19 day of Nov., 1984.

Judge

I ask for this:

p.d.
I. Leake Wornom, Jr.
Attorney for Respondents,
Guy C. Chamberlain and
Kathryn B. Chamberlain

Have seen:

p.q.
James H. Smith

Chancery Order Book 31 page 425

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

[redacted] WATKINS, et al,

Complainants,

v.

Chancery No.

JOSEPH E. HURD, et al,

Respondents.

AMENDED BILL OF COMPLAINT

COUNT ONE

Complainants restate the allegations and prayer contained in their original Bill of Complaint as Count One.

COUNT TWO

1. Complainants restate paragraphs 1 through 10 of [redacted] Count One.

2. That at the time "Holloway Forrest" subdivision was approved in 1964, the subdivider, Edbar Estates Corporation, was required by Section 26-34 of the Town of Poquoson Subdivision Ordinance to provide streets as necessary to "provide connections to all existing or platted streets in adjoining areas and to provide access to any such areas as may not be already provided with existing or platted streets". (Emphasis added).

3. That the "Reserved" parcel referred to in paragraph 5 of Count One was required by the plat approving authority to meet the requirements of Section 26-34 and the local street width requirement of 50'.

4. That the platting of the parcel referred to in 3. above was an offer of dedication by the subdivider for future public use and the approval of the subdivision plat by the

SMITH
AND
ABDELNOUR
ATTORNEYS AT LAW
P. O. BOX 1233
GRAFTON, VA 23692
(804) 898-5409

plat approving authority along with the recording of the approved plat was an acceptance of the subdivider's dedication by the Town of Poquoson.

5. That the deed referred to in paragraph 9 of Count One was a conveyance of an interest which the grantors did not own and is therefore void.

Wherefore, your Complainants pray as follows:

A. That the deed dated April 20, 1983 from Smith to Hurd be set aside and voided;

B. That the deed dated October 10, 1983 from Hurd to Carr be set aside and voided;

C. That the Respondents, Joseph E. Hurd and Annette Hurd be enjoined from in anyway disposing of, selling or transferring the remainder of said "Reserved" parcel;

D. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr, be ordered to convey title to the said "Reserved" parcel to the City of Poquoson, Virginia for dedication as a City street;

E. That your Complainants be awarded attorneys' fees and their costs in this behalf expended;

F. That your Complainants be granted such further and general relief as the nature of their case may require and to equity shall seem meet.

COUNT THREE

1. Complainants restate paragraphs 1 through 10 of Count One and paragraphs 2 through 5 of Count Two.

2. That Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr fraudulently presented an erroneous plat to the plat approving agent of the City of

Poquoson on August 18, 1983 for purposes of effectuating the transfer of property set forth in paragraph 10 of Count One.

3. That, based upon said plat and representations made to the plat approving agent, the agent erroneously and wrongfully approved the division of the "Reserved" parcel thus effectively vacating the subdivision plat of "Holloway Forrest" without due process of law.

4. That the wilfully and wantonly fraudulent actions by Respondents Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr have resulted in Complainants' land being isolated from access to any public road or street and totally landlocked.

5. That the unauthorized and unlawful act of the plat approving agent for the City of Poquoson, Virginia, has resulted in Complainants' land being isolated from access to any public road or street and totally landlocked.

Wherefore, your Complainants pray as follows:

A. That the deed dated April 20, 1983 from Smith to Hurd be set aside and voided;

B. That the deed dated October 10, 1983 from Hurd to Carr be set aside and voided;

C. That the Respondents, Joseph E. Hurd and Annette Hurd be enjoined from in anyway disposing of, selling or transferring the remainder of said "Reserved" parcel;

D. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr, be ordered to convey title to the said "Reserved" parcel to the City of Poquoson, Virginia for dedication as a City street;

E. That the City of Poquoson be ordered to void the plat

referred to in paragraph 10 of Count One and rescind its approval of said conveyance.

F. That your Complainants be awarded attorneys' fees and their costs in this behalf expended;

G. That your Complainants be granted such further and general relief as the nature of their case may require and to equity shall seem meet.

BENJAMIN W. WATKINS, et al.

By _____
Of Counsel

James H. Smith
SMITH AND ABDELNOUR, P.C.
Post Office Box 1233
Grafton, Virginia 23692

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS,

FRANK H. WATKINS,

ELSIE W. POOLE,

VERNIE LEE W. ELLSWICK

and

FRANCIS WATKINS

Complainants

vs. IN CHANCERY NO.

JOSEPH E. HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

ANNETTE HURD
5 Sir Ralph Lane
Poquoson, VA 23662,

PETER H. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

PEGGY L. CARR
3 Sir Ralph Lane
Poquoson, VA 23662,

GUY C. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

KATHRYN B. CHAMBERLAIN
5 Sir Ralph Lane
Poquoson, VA 23662,

PERCY SMITH
209 Hilton Terrace
Newport News, VA 23601

and

EDYTHE SMITH
209 Hilton Terrace
Newport News, VA 23601

Respondents

BILL OF COMPLAINT

To the Honorable G. Duane Holloway, Judge:

. ELLIOTT
Y AT LAW
CE BOX 723
IGINIA 23692

Your Complainants, Benjamin W. Watkins, Frank H. Watkins, Elsie W. Poole, Vernie Lee W. Ellswick and Francis Watkins, respectfully represent as follows:

1. That they are all of the heirs at law of William Leroy Watkins, deceased.

2. That William Leroy Watkins died intestate, seized and possessed of a certain tract of land of approximately 2.5 acres located in the City of Poquoson, Virginia, hereinafter for convenience referred to as the "Watkins' property".

3. That said "Watkins' property" is totally landlocked having no access to or from any roadway and without any means of ingress and egress.

4. That said "Watkins' property" is bordered by Holloway Forrest subdivision.

5. That upon the creation of Holloway Forrest subdivision, a parcel being 50' in width was allocated and marked "Reserved" on the plat of said subdivision as recorded in the Clerk's Office of this Court in Plat Book 7, at page 119, which parcel is more particularly described as follows:

> All those certain lots, part-lots, pieces or parcels of land fronting one hundred feet (100') on the northerly side of Sir Ralph Lane, lying and being in the City of Poquoson, Virginia, shown and designated as a parcel marked "Reserved" on that certain plat entitled, "Subdivision of Holloway Forrest, Poquoson, Virginia", made by Baldwin and Gregg and duly recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 7, page 119, to which reference is here made; said parcel lying between Lots 31 and 32 on said plat.

6. That said "Reserved" parcel provided the only access to the property of your Complainants connecting the "Watkins' property" to Sir Ralph Lane.

7. That Holloway Forrest subdivision was owned by Edbar Estates Corporation, which was dissolved on or about June 1, 1979.

8. That the Respondents, Percy Smith and Edythe Smith, are the trustees in dissolution of said corporation.

W. ELLIOTT
NEY AT LAW
FICE BOX 723
VIRGINIA 23692

9. That the Respondents, Percy Smith and Edythe Smith conveyed by Special Warranty deed dated April 20, 1983, recorded in the Clerk's Office of this Court in Deed Book 377, at page 331, the entire "Reserved" parcel described hereinabove to the Respondents, Joseph E. Hurd and Annette Hurd.

10. That the Respondents, Joseph E. Hurd and Annette Hurd, thereafter conveyed by deed dated October 10, 1983, recorded in the Clerk's Office of this Court in Deed Book 390 at page 523, a portion of said "Reserved" parcel being approximately 11.5 feet in width and as more particularly shown on a plat recorded in the aforesaid Clerk's Office in Plat Book 9, at page 623, to the Respondents, Peter H. Carr and Peggy L. Carr.

11. That the Respondents, Joseph E. Hurd and Annette Hurd, have by contract dated April 7, 1984, agreed to convey the remainder of said "Reserved" parcel to the Respondents, Guy C. Chamberlain and Kathryn B. Chamberlain.

12. That a constructive trust was created for the benefit of your Complainants at the time of the creation of Holloway Forrest subdivision wherein a 50' strip of land was reserved to provide access to the "Watkins' property".

13. That the Respondents, Percy Smith and Edythe Smith, conveyed the aforesaid "Reserved" parcel fraudulently and in total disregard of the rights of your Complainants and without their knowledge or consent.

14. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr, obtained title to said "Reserved" parcel through fraud and misrepresentation and hold said property subject to the previously established constructive trust.

15. That, after having received notice of said constructive trust, and of your Complainants' intentions to seek enforcement of said trust, the Respondents, Joseph E. Hurd and Annette Hurd, in a gross and wantonly negligent manner without any regard for the rights of your Complainants contracted to sell the remainder of said "Reserved" parcel to the Respondents, Guy C. Chamberlain and Kathryn B. Chamberlain.

WHEREFORE, as your Complainants are without remedy save in a

LIOTT
LAW
x 723
23692

Court of Equity, they pray as follows:

A. That the deed dated April 20, 1983 from Smith to Hurd be set aside and voided;

B. That the deed dated October 10, 1983 from Hurd to Carr be set aside and voided;

C. That the Respondents, Joseph E. Hurd and Annette Hurd, be enjoined from in anyway disposing of, selling or transferring the remainder of said "Reserved" parcel;

D. That the Respondents, Joseph E. Hurd, Annette Hurd, Peter H. Carr and Peggy L. Carr be ordered to convey title to the said "Reserved" parcel to the City of Poquoson, Virginia, for dedication as a city roadway.

E. That your Complainants be awarded attorney's fees and their costs in this behalf expended;

F. That your Complainants be granted such other further and general relief as the nature of their case may require and to equity shall seem meet.

BENJAMIN W. WATKINS
FRANK H. WATKINS
ELSIE W. POOLE
VERNIE LEE W. ELLSWICK
FRANCIS WATKINS

By _____
Of Counsel

_____ p.q.

JAMES W. ELLIOTT
2314 Route 17
Post Office Box 723
Grafton, VA 23692

S W. ELLIOTT
RNEY AT LAW
FFICE BOX 723
, VIRGINIA 23692

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,

Complainants,

vs. Chancery No.

JOSEPH E. HURD, et al,

Respondents.

ORDER

This day came the Complainants, by counsel, and moved the Court for leave to file an amended Bill of Complaint and to add the City of Poquoson, Virginia, a municipal corporation, as an additional party Respondent; and was argued by counsel.

Whereupon, for good cause shown it is hereby Ordered that Complainants be and they hereby are granted leave of Court to file an Amended Bill of Complaint within ten (10) days of the entry of this Order and to add the City of Poquoson, Virginia, a municipal corporation as an additional party Respondent. All Respondents shall answer the amended Bill in accordance with the Rules of Court made and provided for cases in equity.

ENTER: 12/4/84

JUDGE

I ask for this:

James H. Smith, p.q.

Seen:

Ralph M. Goldstein, p.d.

Robyn L. Hylton, p.d.

A COPY TESTE:
EDITH M. ELLIOTT
CLERK CIRCUIT COURT
COUNTY OF YORK, VA.
D. C.

SMITH AND ELNOUR
NEYS AT LAW
BOX 1233
N, VA 23692
898-5409

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,

Plaintiffs

v Chancery Number: 6286

JOSEPH E. HURD, et al,

Respondents

D E M U R R E R

Come now the defendants, Percy Smith and Edythe Smith, by counsel, and demur to the Amended Bill of Complaint filed herein and say that it is not sufficient in equity and ought not to be prosecuted on the following grounds:

1. That the Amended Bill of Complaint fails to state a cause of action against these defendants upon which relief can be granted.

2. That no privity or legal relationship or legal obligation ever existed between these defendants and the complainants upon which relief can be granted.

3. That no constructive trust for the benefit of the complainants ever existed in said property, Percy Smith and Edythe Smith being prior to the sale of said property to Joseph E. Hurd and Annette Hurd, the fee simple owners of said property as Trustees in Dissolution of Edbar Estates Corporation, said corporation having been dissolved on or about June 1, 1979.

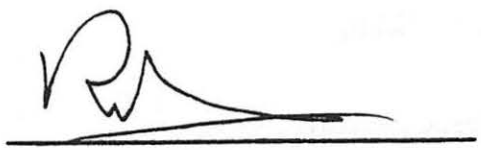
4. That any claim or cause of action of the complainants is barred by the Statute of Limitations and/or the Doctrine of Laches.

OSTEIN & MUROV
ATTORNEYS
SUITE TWO A
3195 WARWICK
BOULEVARD
ORT NEWS, VIRGINIA
23602

RECEIVED
DEC 6 1984

WHEREFORE, the defendants, Percy Smith and Edythe Smith, by counsel, pray that this Court grant their demurrer to the Amended Bill of Complaint filed herein.

PERCY SMITH and EDYTHE SMITH

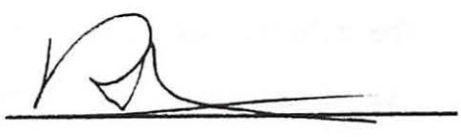


Of Counsel

RALPH M. GOLDSTEIN
GOLDSTEIN & MUROV
13195 Warwick Blvd.
Suite 2-A
Newport News, Virginia 23602

CERTIFICATE

I certify that I have this 5th day of December, 1984, mailed a copy of this Demurrer to all counsel of record.



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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, ET AL,

Complainants,

v. CHANCERY NO. 6286

JOSEPH E. HURD, ET AL,

Respondents.

AMENDED ANSWER TO AMENDED BILL OF COMPLAINT

COME NOW the Respondents, Joseph E. Hurd and Annette Hurd, by counsel, and for their Amended Answer to the Amended Bill of Complaint filed herein by the Complainants, state as follows:

COUNT ONE

1. The allegations of Paragraphs One, Two, Three, and Four of Count One of the Amended Bill of Complaint are neither admitted nor denied.

2. The allegations of Paragrahp Five of the Amended Bill of Complaint are admitted except the Respondents, Joseph E. Hurd and Annette Hurd, deny that the parcel being 50' in width was "allocated".

3. The allegations of Paragraph Six of Count One of the Amended Bill of Complaint are denied.

4. The allegations of Paragraphs Seven and Eight of Count One of the Amended Bill of Complaint are neither admitted nor denied.

5. The allegations of Paragraphs Nine and Ten of Count One of the Amended Bill of Complaint are admitted.

6. With regard to the allegations of Paragraph Eleven of Count One of the Amended Bill of Complaint, the Respondents, Joseph E. Hurd and Annette Hurd,

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LTZ & KELLY, P.C.
Washington Avenue
wport News, Va.

admit that they entered into a contract dated April 7, 1984, whereby the Respondents, Joseph E. Hurd and Annette Hurd, agreed to convey the remainder of said reserve parcel to the Respondents, Guy C. Chamberlain and Kathryn B. Chamberlain. However, due to the filing of the present lawsuit and the recording of a lis pendens on the property in question in this lawsuit, the Respondents, Joseph E. Hurd and Annette Hurd, were prevented from conveying the property in question to the Chamberlains and the contract is no longer in existence.

7. The allegations of Paragraphs Twelve, Thirteen, Fourteen and Fifteen of Count One of the Amended Bill of Complaint are denied.

WHEREFORE, the Respondents, Joseph E. Hurd and Annette Hurd, by counsel pray that this Count One of the Amended Bill of Complaint be dismissed.

COUNT TWO

8. The Respondents, Joseph E. Hurd and Annette Hurd, restate their answers to Paragraphs One through Ten of Count One of the Amended Bill of Complaint as if said answers were set forth in full in this answer to Count Two.

9. The allegations of Paragraphs Two, Three, Four and Five of Count Two of the Amended Bill of Complaint are denied.

WHEREFORE, the Respondents, Joseph E. Hurd and Annette Hurd, by counsel pray that this Count Two of the Amended Bill of Complaint be dismissed.

COUNT THREE

10. The Respondents, Joseph E. Hurd and Annette Hurd, restate their answers to Paragraphs One through Ten of Count One of the Amended Bill of Complaint and their answers to Paragraphs Two through Five of Count Two of the Amended Bill of Complaint as if said answers were set forth in full in this answer to Count Three.

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vport News, Va.

11. The allegations of Paragraphs Two, Three, Four and Five of Count Three of the Amended Bill of Complaint are denied.

WHEREFORE, the Respondent, Joseph E. Hurd and Annette Hurd, by counsel pray that this Count Three of the Amended Bill of Complaint be dismissed.

JOSEPH E. HURD AND ANNETTE HURD

By: _____
Of Counsel

Conway H. Sheild, III
Robyn C. Hylton
Jones, Blechman, Woltz & Kelly, P.C.
2600 Washington Avenue, Suite 700
Newport News, Virginia 23607
(804) 245-2861

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Amended Answer to the Amended Bill of Complaint has been forwarded to the following individuals on this the 7th day of January, 1985:

Ralph M. Goldstein, Esquire
13195 Warwick Boulevard
Suite 2-A
Newport News, Virginia 23602

James H. Smith, Esquire
Post Office Box 1233
Grafton, Virginia 23692

Peter H. Carr and Peggy L. Carr
300 Choctow Street
Enterprise, Alabama 36330

I. Leake Wornom, Jr., Esquire
Suite 105
739 Thimble Shoals Boulevard
Newport News, Virginia 23606

_____
Of Counsel

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LTZ & KELLY, P. C.
Washington Avenue
wport News, Va.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et als, Complainants

v. Chancery No. 6286

JOSEPH E. HURD, et als, Respondents

DEMURRER

Your Respondents, PETER H. CARR and PEGGY L. CARR, join in the Demurrers to the Bill of Complaint and Amended Bill of Complaint filed by the Respondents, PERCY SMITH, EDYTHE SMITH, JOSEPH E. HURD and ANNETTE HURD, for each of the reasons therein stated.

WHEREFORE, your Respondents pray the Court dismiss the Bill of Complaint and Amended Bill of Complaint.

ANSWER TO AMENDED BILL OF COMPLAINT

Your Respondents, PETER H. CARR and PEGGY L. CARR, for their answer to the Amended Bill of Complaint respectfully say as follows:

COUNT ONE

1. Paragraphs 1 through 9 are denied.

2. Paragraph 10 is admitted.

3. Paragraphs 11, 12, 13, 14 and 15 are denied where applicable to your Respondents.

COUNT TWO

1. The Respondents' answers as set forth above to

paragraphs 1 through 10 are restated.

2. Paragraphs 2, 3, 4 and 5 are denied.

COUNT THREE

1. The Respondents' answers as set forth above to paragraphs 1 through 10 (Count One) and paragraphs 2 through 5 (Count Two) are restated.

2. Paragraphs 2, 3, 4 and 5 are denied.

WHEREFORE, your Respondents pray that each and every Count of the Amended Bill of Complaint be dismissed and they be awarded costs.

PETER H. CARR and PEGGY L. CARR

BY: _____
OF COUNSEL

Stephen D. Harris
McGuire, Woods & Battle
Post Office Box 379
Williamsburg, Virginia 23187

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 1985, a true copy of the foregoing Demurrer and Answer to Amended Bill of Complaint was mailed to: James H. Smith, Esquire, counsel for the Complainants, Smith and Abdelnour, P.C., Post Office Box 1233, Grafton, Virginia, 23692; Ralph M. Goldstein, Esquire, counsel for Percy and Edythe Smith, 13195

Warwick Boulevard, Suite 2-A, Newport News, Virginia, 23602; and Robyn C. Hylton, counsel for Joseph E. and Annette Hurd, Jones, Blechman, Woltz & Kelly, P.C., Post Office Box 78, Newport News, Virginia, 23607.

OF COUNSEL

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al., Petitioners	:	
v.	:	In Chancery 6286
JOSEPH E. HURD, et al., Defendants	:	

ANSWER OF THE CITY OF POQUOSON

COMES NOW the City of Poquoson, by counsel, and for its Answer to the Amended Bill of Complaint filed herein, states as follows:

1. The City has insufficient knowledge of the matters set out in paragraphs 1 through 15 inclusive of the original Bill of Complaint and therefore, cannot admit nor deny the truth of such allegations. The City of Poquoson requests strict and convincing proof of each allegation contained within each of these paragraphs.

2. With regard to the allegations contained within Count II, the City of Poquoson restates its answer to Count I above. The City of Poquoson further admits that paragraph 2 of Count II of the Amended Bill of Complaint contains a correct quotation of §26-34 of the Subdivision Ordinance of the Town of Poquoson as it existed in 1964.

3. The City of Poquoson has insufficient knowledge to determine the truth or falsity of the allegations set out in paragraph 3, of Count II of the Amended Bill of Complaint and therefore, requests that strict and convincing proof be provided

JAMIN M. HAHN
CITY ATTORNEY
CITY OF POQUOSON
4-D WYTHE CREEK RD.
OQUOSON, VA 23662

of the allegations contained therein.

4. The allegations contained in paragraph 4 and paragraph 5 of the Amended Bill of Complaint state a conclusion of law which requires judicial determination and therefore, the City neither admits nor denies the validity of such conclusion.

5. With regard to the allegations of Count III, the City restates its answer to paragraphs 1-15 of Count I and paragraphs 2-5 of Count II, (2) The City has insufficient knowledge to admit or deny the allegations contained in paragraphs 2-5 of Count III and therefore, asks for strict and convincing proof of each allegation contained therein.

NOW HAVING FULLY ANSWERED the allegations set forth in the Amended Bill of Complaint, the City of Poquoson affirmatively states as follows:

1. That at all times the plat-approving agent and all other officers and officials of the City of Poquoson acted in good-faith in the exercise of their governmental functions and therefore, the City of Poquoson cannot be held liable for any damage expense or cost which the complainants complain of.

WHEREFORE, the City of Poquoson, prays that it be dismissed as a party to this lawsuit and recover its costs expended.

CITY OF POQUOSON, VIRGINIA

By: Benjamin M. Hahn
Counsel

Benjamin M. Hahn
City Attorney
City of Poquoson
534-D Wythe Creek Road
Poquoson, Virginia 23662

AMIN M. HAHN
ITY ATTORNEY
Y OF POQUOSON
WYTHE CREEK RD.
UOSON, VA 23662

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Answer was mailed to all counsel of record this 29th day of May, 1985.

Benjamin M. Hahn

Benjamin M. Hahn

AMIN M. HAHN
ITY ATTORNEY
Y OF POQUOSON
WYTHE CREEK RD.
UOSON, VA 23662

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al, :

Plaintiffs, :

v. : CHANCERY NO. 6286

JOSEPH E. HURD, et al, :

Defendants. :

DECREE OF REFERENCE

THIS CAUSE, having regularly matured, and docketed, came this day to be heard on the Bill of Complaint and the exhibits filed herein, and upon the Answers filed by the defendants, and it was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court doth ADJUDGE, ORDER and DECREE that this cause be and the same hereby is referred to _____ ROBERT Rigsby, a Commissioner in Chancery of this Court, who, after giving due notice of the time and place for executing this reference as required by law, will inquire and report as follows:

1. Whether the facts and statements in the Amended Bill of Complaint are true.

2. Whether the facts and statements in the Answers filed by each of the defendants named herein are true.

3. Who are the owners of the real estate described in the Amended Bill of Complaint and in what proportions.

4. An account of all delinquent taxes and liens, if any, on said real estate, binding on said real estate, their amounts, and the order of the priority.

5. Whether all proper parties are before the Court or whether additional defendants should be made parties defendant to this cause.

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6. What is the fair market value of the real property in question and the annual rental value of the same?

7. A determination of the rights and liabilities of all parties resulting from the actions of the City of Poquoson in approving the boundary line adjustment plat between the defendants, Joseph E. Hurd and Annette Hurd and Peter H. Carr and Peggy L. Carr.

8. Whether the facts and circumstances surrounding the events set forth in this cause of action give rise to the imposition of a constructive trust on the property in question for the benefit of the plaintiffs.

9. Whether the plaintiffs under any construction of the facts are entitled to a right-of-way over the parcel in question; and if so, a determination of the nature and location of the nature and location of such a right-of-way.

10. Any and all other matters deemed pertinent by said Commissioner in Chancery and such matters concerning which he is required to report by any party in interest, if the same be pertinent to the issues in this cause.

And the Commissioner shall also make his report to the Court as required by law.

ENTERED this 31 day of May, 1986.

JUDGE

I ASK FOR THIS:

Conway H. Sheild, III, Esquire
Attorney for Joseph E. Hurd

SEEN AND AGREED:

James H. Smith, Esquire
Attorney for Benjamin W. Watkins, et als.

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) Washington Avenue
ewport News, Va.

Ralph M. Goldstein, Esquire
Attorney for Percy Smith
and Edythe Smith

Stephen D. Harris, Esquire
Attorney for Peter H. Carr
and Peggy L. Carr

Benjamin M. Hahn, Esquire
Attorney for the City of
Poquoson

A COPY TESTE:
EDITH M. ELLIOTT
CLERK OF CIRCUIT COURT
COUNTY OF YORK, VA.

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,	:	
Plaintiffs,	:	
v.	:	IN CHANCERY
	:	NO. 6286
JOSEPH E. HURD, et al,	:	
Defendants.	:	

NOTICE OF HEARING

TAKE NOTICE: That pursuant to the Order of Reference entered in the above-styled cause on the 31st day of May, 1986, by the Honorable G. Duane Holloway, Judge of the aforesaid Court, the undersigned will on the 15th day of August, 1986 at 9:00 a.m., at his office, located at 2174-C George Washington Memorial Highway, Grafton, Virginia, hold a hearing for the purpose of inquiry into the following items:

1. Whether the facts and statements in the Amended Bill of Complaint are true.

2. Whether the facts and statements in the Answers filed by each of the defendants named herein are true.

3. Who are the owners of the real estate described in the Amended Bill of Complaint and in what proportions.

4. An account of all delinquent taxes and liens, if any, on said real estate, binding on said real estate, their amounts, and the order of the priority.

5. Whether all proper parties are before the Court or whether additional defendants should be made parties defendant to this cause.

6. What is the fair market value of the real property in question and the annual rental of the same?

7. A determination of the rights and liabilities of all parties resulting from the actions of the City of Poquoson in approving the boundary line adjustment plat between the defendants, Joseph E. Hurd and Annette Hurd and Peter H. Carr and Peggy L. Carr.

8. Whether the facts and circumstances surrounding the events set forth in this cause of action give rise to the imposition of a constructive trust on the property in question for the benefit of the plaintiffs.

9. Whether the plaintiffs under any construction of the facts are entitled to a right-of-way over the parcel in question; and if so, a determination of the nature and location of such a right-of-way.

10. Any and all other matters deemed pertinent by said Commissioner in Chancery and such matters concerning which he is required to report by any party in interest, if the same be pertinent to the issues in this cause.

At which time and place you are required to attend with such books, papers, vouchers and other evidence as will enable the undersigned to comply with the said Order of this Court. If said proceedings be not completed on the said date, they

will be adjourned from day to day at the same time and place until completed.

Please govern yourself accordingly.

Robert F. Ripley, Jr.
Commissioner in Chancery
2174-C George Washington Mem. Hwy.
P. O. Box 1749
Grafton, Virginia 23692
(804) 898-3141

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,

Plaintiffs,

vs. Chancery No. 6286

JOSEPH E. HURD, et al,

Defendants.

O R D E R

THIS DAY came the plaintiffs, by counsel, and moved the Court for leave to amend their Bill of Complaint to show the defendants, PERCY SMITH and EDITH SMITH, as Trustees in dissolution of EDBAR ESTATES, INC., a dissolved Virginia corporation, and not individually as shown in the original Bill of Complaint and Amended Bill of Complaint; and was argued by counsel.

WHEREFORE, for good cause shown, it is hereby Ordered that the Bill of Complaint in this cause is amended to show that PERCY SMITH and EDITH SMITH are proceeded against as Trustees in dissolution of EDBAR ESTATES, INC., a dissolved Virginia corporation and not as individuals.

ENTER: 9/6/18

JUDGE

I ask for this:

James H. Smith, Esq.

Seen:

Conway H. Sheild, III, Esq.

Ralph M. Goldstein, Esq.

Stephen D. Harris, Esq.

Benjamin M. Hahn, Esq.

A COPY TESTE:
CLERK OF COURT
COUNTY OF YORK, VA.

D. C.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, ET ALS,	:	
Plaintiffs,	:	
v.	:	CHANCERY NO. 6286
JOSEPH E. HURDS, ET ALS,	:	
Defendants.	:	

COMMISSIONER'S REPORT

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to the Decree made on the 31st day of May, 1986, spread in Chancery Order Book 33 at page 600 in the Clerk's Office of the Circuit Court for the County of York, Virginia, this cause was referred to the undersigned Commissioner in Chancery. Thereafter, due notice was given to the parties as required by the terms of said decree that on the 15th day of August, 1986, at 9:00 a.m., at the law office of Robert F. Ripley, Jr., Esquire, in Grafton, Virginia, the Commissioner would proceed to execute the said Order; and, thereupon James H. Smith, Esquire, attorney for the Plaintiffs appeared on their behalf along with Conway H. Sheild, III, Esquire and Robyn C. Hylton, Esquire, who appeared as attorneys for the Defendants, Joseph E. Hurd and Annette Hurd, and Ralph M. Goldstein, Esquire, who appeared as the attorney for the Defendants, Percy Smith and Edythe Smith, and Benjamin M. Hahn, Esquire, who appeared as attorney for the City of Poquoson. Whereupon your Commissioner duly examined the

witnesses produced by the parties touching upon the matters in inquiry before him, their testimony being reduced to writing in the form of depositions by Schneider Reporting Company, which depositions are herewith returned and made a part of this report, and said Commissioner also examined the documentary proofs produced and exhibits introduced by the various parties before your Commissioner, which are also herewith returned.

Upon due consideration of all of which and based upon the questions propounded in the Decree of Reference of May 31, 1986, your Commissioner respectfully submits the following report.

1. WHETHER THE FACTS AND STATEMENTS IN THE AMENDED BILL OF COMPLAINT ARE TRUE?

2. WHETHER THE FACTS AND STATEMENTS AND THE ANSWERS FILED BY EACH OF THE DEFENDANTS NAMED HEREIN ARE TRUE?

3. WHO ARE THE OWNERS OF THE REAL ESTATE DESCRIBED IN THE AMENDED BILL OF COMPLAINT AND IN WHAT PROPORTIONS?

The Commissioner finds from the evidence produced before him and the previously filed depositions of Robert J. Watkins, Percy Smith, Roger D. Spearman, John H. Dressler and George Dickerson taken before Catherine B. Edwards, a Notary Public for the State of Virginia, at Large, at the offices of Smith and Abdelnour at 1949 Route 17, Grafton, Virginia, at 10:00 a.m., 11:00 a.m., 11:45 a.m. 12:45 p.m. and 1:10 p.m., respectively, on May 21, 1985 that the subdivision plat of "Holloway Forrest

Subdivision" designating the parcel in question as a 50 foot wide, 130 foot long, strip of land with fillet curbs and radius shown on the plat only as "Reserved" without any further explanation was made August 24, 1964 by Baldwin and Greg, Civil Engineers & Surveyors, and was recorded on January 29, 1965 in the Clerk's Office of the Circuit Court for the County of York, Virginia in Plat Book 7, at page 119. The Plaintiffs allege that in 1964 the "Reserved" parcel was actually made a street of the Town of Poquoson when the plat was approved by the plat approving agent for the Town of Poquoson and said street is now available to them, the adjacent land owners, as a public right of way, or in the alternative that they have acquired an easement by necessity over the "Reserved" parcel as they are "land locked".

Jeremiah Watkins, the grandfather of Robert J. Watkins, Esquire, a well-known York County/Poquoson attorney, was at one time the owner of certain real property located in what is presently known as the City of Poquoson, Virginia, which parcel of property included both the 2.0 acres, more or less, currently owned by the Complainants and the land which was subsequently developed into Holloway Forrest Subdivision. In 1964 the said Robert J. Watkins sold the property which is now Holloway Forrest Subdivision to Edbar Estates, Inc., a Virginia corporation, who subdivided it into residential lots and streets. The subdivision plat was approved by William P. Larue, then Town Manager of the Town of Poquoson and recorded as stated aforesaid.

The recorded plat of subdivision did in fact show that a parcel of land designated only as "Reserved" lays between lots 31 and 32, Sir Ralph Lane and the 2.0 acres, more or less, parcel of land belonging to the Complainants. From 1965 to 1977 no one paid either the Town of Poquoson or its successor, the City of Poquoson, any taxes on this 50 foot "Reserved" parcel of land, nor was said land taxed either by the Town of Poquoson or its successor, the City of Poquoson. The subdivider, Edbar Estates, Inc. was disolved on June 1, 1979. In 1977, however, the Commissioner of the City of Poquoson, John Dressler, began to tax Percy Smith for Edbar Estates, Inc. on the 50 foot "Reserved" parcel in question, and the other "Reserved" parcels at other locations in the subdivision. The taxation books showed Percy Smith and Edythe Smith as Trustees in dissolution of Edbar Estates, Inc. In a response to inquiry from Percy Smith, Jonathan F. Gibson, III, the then City Attorney for the City of Poquoson, by letter dated April 2, 1981, advised Ralph Goldstein, attorney for Percy Smith that this property did in fact belong to Percy Smith and he had the right to sell it to the owners of lot 31 or lot 32. He further advised that although under the Subdivision Ordinance the parcel was to small for anyone to construct anything on it, Smith could sell it to persons other than the owners of lot 31 or lot 32. In reaching his decision the City Attorney made specific reference to Section 15.1-478 of the Code of Virginia, 1950 as amended, pointing out the sentence which

states, "but nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved". Furthermore, on August 11, 1981 the City Manager, Charles R. Brown, noted that the City of Poquoson recognized Percy Smith as the owner of this 50 foot "Reserved" parcel and thus, he did possess the right to convey the parcel.

In September, 1981, Joseph E. Hurd and Annette Hurd purchased from Antonio Ulisse and Betty Jean Ulisse lot 31 in the Holloway Forrest Subdivision. The garage on his home purchased by the Hurds immediately abutted the property line of lot 31 and the "Reserved" parcel. The Hurds as well as his predecessors in title used the "Reserved" strip for ingress and egress to the garage.

By deed dated April 20, 1983, Percy Smith and Edythe Smith conveyed the 50 foot "Reserved" parcel to Joseph Hurd and Annette Hurd. Thereafter, the Hurds conveyed a portion of the 50 foot "Reserved" parcel to Peggy Carr and Peter Carr, the owners of lot 32, which also abutted the parcel in question.

In accordance with the dedicates of the Poquoson Subdivision Ordinance, the Carrs and the Hurds entered into a boundary line agreement dated October 10, 1983 readjusting the boundary lines between the two parties to incorporate their respective portion of the 50 foot parcel into their respective lots. The City of Poquoson approved this boundary line adjustment on August 18, 1983, the plat was recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia on January 5, 1984 in Plat Book 9, at page 623. By this boundary line adjustment, lot 31

extended approximately three-quarters into the 50 foot parcel and lot 32 extended approximately one-quarter into the 50 foot parcel. In accordance with the City of Poquoson Subdivision Ordinance the plat specifically noted, "The land hereby conveyed or exchanged shall not for any person be or become a separate independent lot, tract or parcel but for all purposes shall become and be considered a part of the adjacent lot, tract, or parcel already owned by Joseph E. and Annette Hurd and Peter H. and Peggy L. Carr, with conveyance or exchange."

By a Contract of Purchase dated April 17, 1984 the Hurds entered into an agreement to sell lot 31 as replated to Guy C. and Catherine B. Chamberlin. On June 26, 1984 the Complainants in this suit, Benjamin W. Watkins, Frank H. Watkins, Elsie W. Pool, Vernon Lee W. Elswick and Francis Watkins filed a Lis Pendens in the Clerk's Office aforesaid specifically referencing this suit, Chancery No. 6286. As a result of the Les Pendens, the Hurds claim they lost the contract of sale with the Chamberlains and are unable to sell their property.

At the time Robert J. Watkins, Esquire, conveyed the property which is now known as Holloway Forrest Subdivision to Edbar Estates, Inc., the heirs-at-law of W. Leroy Watkins owned a two acre, more or less, parcel of property north of and contiguous to lot 31, the "Reserved" parcel and lot 32 in Holloway Forrest Subdivision. However, neither counsels for the Complainants nor the Defendants have found any evidence of record or on the ground of an easement for ingress and egress across any portion of the

Holloway Forrest Subdivision, including the "Reserved" parcel, benefiting the Complainants' property.

The Commissioner is of the opinion that the answer to the first question of whether or not the so called "Reserved" parcel is a street or road is to be found from an examination of the recorded plat, the applicable portion of the 1950 Code of Virginia, as amended and case law. While the 50 foot wide "Reserved" parcel of property is shaped like and certainly looks like a street, it merely has the designation "Reserved" placed on it. From the evidence it is clear the Robert J. Watkins, Esquire, the former attorney for the Town of Poquoson, who wrote the Town Subdivision Ordinance and reviewed the subdivision plat prior to recordation, was personally satisfied that the "Reserved" parcel met both the requirements of the Ordinance and his personal requirements of a street to provide access to his relatives property. Also, one of the principles of Edbar Estates, Inc., the developer of Holloway Forrest Subdivision, Mr. Percy Smith testified that while at the time of making and recording the plat of the subdivision it was his intent to reserve title unto himself, later he thought that the Town of Poquoson owned the property since he had not been required to pay taxes on it. And, the former City Manager of the City of Poquoson, Mr. George W. Dickerson, thought that by merely marking the parcel of property as "Reserved" that the property became that of the Town or City of Poquoson.

However, at the time of the recording of the aforesaid subdivision plat, the Town of Poquoson, Virginia, had as part of its Code a Subdivision Ordinance which was enabled by the 1950 Code of Virginia, as amended, Sections 15.1-465 to 15.1-285. Section 26-27 of the Town of Poquoson Code provided that "Subdivisions made pursuant to this chapter shall be in compliance with the layout requirements and provisions of this article." Section 26-34 provided that "streets shall be provided as necessary to provide necessary connections to all existing or plated streets in adjoining areas and to provide access to any such areas as may not be already provided with existing or plated streets."

However, when this Commissioner examines the actual recorded subdivision plat of Holloway Forrest looking to find some evidence of that the plat approving authority deemed it necessary to provide a street or road to the Complainants' property, there is absolutely no indication whatsoever of who owned the property north of and contiguous to the 50 foot "Reserved" parcel of property in question and the Complainants' property is not identified at all. It is extremely important to note that the plat approving agent did, however, deem it necessary to provide a street to another adjacent property owner. Specifically, Sir Ralph Lane, a major street in the subdivision, was required to be extended to the east between various residential lots to the adjoining property on the eastern side of Holloway Forrest Subdivision. No cul-de-sac was provided at the end of the lane, no

heavy boundary line was drawn on the face of the plat across the street; and Sir Ralph Lane abruptly stops at the easterly boundary of the subdivision and that of the adjoining property owners. The Commissioner therefore concludes that if the plat approving agent thought that it was necessary to provide a street connection to provide access to any of the property on the northern side of the "Reserved" parcel, it would have done so just as it did for the extension of Sir Ralph Lane. Section 15.1-478 of the 1950 Code of Virginia, as amended, states that "the recordation of such plat shall operate to transfer, in fee simple, to the respective counties and municipalities in which the land lies any portion of the premises plated as is (emphasis added) on such plat set apart for streets, alleys or other public use (emphasis added) and to transfer to such county or municipalities any easement indicated on such plat to create a public right of passage over the same; but nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved". While counsel for the Complainants correctly points out in his brief that the "heretofore validly reserved" language first appeared in the statute in July of 1962, nevertheless the General Assembly clearly recognized that a developer may have theretofore validly reserved property in a subdivision and no language in the statute indicates that a developer may not validly reserve property in the subdivision thereafter as Virginia has adopted, as later pointed out herein, a modified version of the so-called "partial acceptance doctrine". The

statute makes it clear that a developer must plat the property as a street, alley or some other type of public use. Merely putting the word "Reserved" on property does not achieve that goal as it fails to comply with the requirements of Section 15.1-478 of the 1950 Code of Virginia, as amended. In Brown v. Tazwell County Auth., 226 Va. 125 at page 131, the Court held that a statutory dedication occurs unless the requirements of the applicable statutes and ordinances have been complied with. The evidence in this case clearly indicates that regardless of the intent or misconception of any parties involved, the applicable statutes and ordinances were not complied with in order to make the "Reserved" parcel in question a street or road. This is especially true where on the face of the same plat the plat approving authority clearly required the developers to build a road to the property owners on the eastern side of the subdivision.

As previously pointed out, there is substantial case law in Virginia which adopts a modified version of the partial acceptance doctrine. Ocean Island Inn v. Virginia Beach, 216 Va. 474 at page 479 (1975) annunicates that where a governing body has accepted part of the streets appearing on a recorded plat and no "intention to limit the acceptance" is shown, such partial acceptance constitutes acceptance of all of the streets, provided that the part accepted is sufficiently substantial to evidence an intent to accept the comprehensive scheme of public user

reflected in the plat. In Ocean Island Inn the Court noted examples of how the City of Virginia Beach had excerised jurisdiction and dominion over various streets in the subdivision which constituted a substantial part of the street system shown on the plat, and which the Court said constituted acceptance of those streets. The Court further stated that no intent to limit the acceptance was shown, acceptance of the streets were an acceptance of all plated streets.

However, in this case the evidence not only shows no acts of dominion or implied acceptance by the governing body which taxed the "Reserved" parcel, permitted its sale and approved a boundary line adjustment between the parties, thereby expressly refusing any alleged offer of acceptance. The evidence in this case makes it absolutely clear that an intention to limit the acceptance of the so-called "Reserved" parcel was as manifest as possible. When one further examines the recorded plat, it is to be noted that on the western end of Sir Ralph Lane and on the southern end of Ladon Way, cul-de-sacs were provided leaving to the developers of the subdivision a small parcel of land shaped like an extended street or road which are also clearly marked "Reserved". The preparer of the plat provided a note (see note 2 on said plat) that the area within the dotted lines (see lots 27, 28, 12, 13, 14 and 15) reverted to the abutting property owners if and when (emphasis added) street is extended to adjacent property. Therefore, the plat approving

agent did not find it necessary to require the developer to extend these various streets, including the 50 foot wide "Reserved" parcel, and he thereby complied with Virginia's modified version of the partial acceptance doctrine by clearly limiting acceptance of the streets in the subdivision to those falling within the heavy boundary lines delineating the sides of the streets and eliminating from acceptance those parcels of property marked as "Reserved".

Since the Commissioner has found that the 50 foot wide "Reserved" was never properly plated as to transfer to the Town or City of Poquoson an easement to create a public right of passage over said property, the next question is whether or not Complainants' are entitled to a right-of-way for ingress and egress by necessity? Whether or not a right-of-way by necessity has been established hinges upon the law as established in Virginia by Middleton v. Johnson, 221 Va. 797 (1981) which is relied upon by the parties hereto. At page 803 in the aforesaid opinion the Court stated the following:

> In Virginia, contrary to the rule in some other jurisdictions, a showing that the way is reasonably necessary to the enjoyment of the dominant estate is all that is required; some courts hold that absolute physical necessity must be established. Jennings v. Lineberry, 180 Va. at 48, 21 S.E.2d at 771. And such reasonable necessity must be proven by clear and convincing evidence. Fones v. Fagan, 214 VA. at 90, 196 S.E.2d at 918. Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the

> allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt. it does not mean clear and unequivocal. Fred C. Walker Agency v. Lucas, 215 Va. 535, 540-41, 211 S.E.2d 88, 92 (1975).
>
> Further, a way of necessity will not be established if there is another way of access, although less convenient and will involve some labor and expense to develop. Chaiken v. Harry J. O'Meara Title Co., 212 Va. 510, 513, 184 S.E.2d 746, 749 (1971).

The present cause allows this Commissioner to use the same factual approach to the question of whether or not a right-of-way by necessity has been established as the Court used in Middleton v. Johnson. The Court in that case first addressed the question of who had the burden of proof of establishing a right-of-way by necessity. In Middleton (see page 804) the Court explicitly held that the burden to prove lack of other means of ingress and egress rests upon the party seeking to establish a right-of-way by necessity. As the Complainant in this case is seeking to establish a right-of-way by necessity over the lands of the Defendants, the burden of proof then is upon the Complainant.

The principles of law pertinent to this case are set forth in Middleton (see pages 802 and 803). There the Court said that...

> "a right-of-way by necessity arises from an implied grant or implied reservation. Stated differently, it is an easement implied upon a conveyance of real estate. To establish such a right, the alleged dominant and servient tracts must have belonged to the same person at some time in the past. The right is based upon the idea that whenever one conveys property, perty he conveys that which is necessary for the beneficial use of the land and retains that which is necessary for the beneficial use of

> the property he still possesses. Thus, in the case of an implied grant, an easement is acquired by a Grantee over the Grantor's property while the land conveyed is neither entirely surrounded by property of the Grantor or else is bordered in part by the land of a stranger and in part by land of the Grantor. Under either situation, the Grantee obtains a way of necessity over the Grantor's property because otherwise the land conveyed would be inaccessible and useless." Middleton, supra p. 802 and 803.

This Commissioner can thus follow the same approach to the facts as the Court did in Middleton and Chaiken. There is no dispute that at one time the respective properties of these litigants were owned by a common Grantor who conveyed out the land of the Defendants' predecessors in title leaving to himself the land which subsequently became that of the Complainants surrounded by the remaining property of the original Grantor and by lands of strangers. Unfortunately for the Complainants the Deed to the land of the Defendants' predecessors in title (i.e. Holloway Forrest Subdivision) made no mention of an easement. Thus, all the essential elements for establishment of a way of necessity, under the circumstances of this case are present unless the dominant tract has another means of access, though less convenient and more expensive to develop. As stated in Middleton, the ultimate question in this case involves the existence of such other means of access in fact and law.

Commissioner's Exhibit Number One clearly shows that in this particular case the Complainant's parcel of land is surrounded by not less that nine (9)) parcels of, namely, property now or

formerly owned by Perdue on the west, seven (7)) subdivision lots in Holloway Forrest Subdivision, i.e., Lots 29, 30, 31 and 32 (as enlarged by the boundary line adjustment approved by the City of Poquoson), and lot 33, and on the east by lots 35 and a portion of lot 36, along with their relatives' property on the north. Under such circumstances, it is encumbent upon the Complainant in discharging their ultimate burden to show by clear and convincing evidence that the owners of their land never had a right-of-way by prescription or otherwise not only across the lands of the Defendants but all the other surrounding properties of others and if such right-of-way existed at one time, that it had since been terminated (Middleton and Chaiken, supra). The testimony presented to this Commissioner was insufficient to produce a firm belief as to the Complainants' allegation of lack of other access in light of the law in Virginia as set forth in Middleton and Chaiken and the evidence in this case. For these reasons, this Commissioner holds that the Complainants have failed to sustain their burden of proof by clear and convincing evidence that a right-of-way by necessity presently exists over the Complainants' land.

4. AN ACCOUNT OF ALL DELINQUENT TAXES AND LIENS, IF ANY, ON SAID REAL ESTATE, BINDING ON SAID REAL ESTATE, THEIR AMOUNTS, AND THE ORDER OF PRIORITY?

The Commissioner finds that there are no delinquent taxes or liens on the aforesaid property.

5. WHETHER ALL PROPER PARTIES ARE BEFORE THE COURT OR WHETHER ADDITIONAL DEFENDANTS SHOULD BE MADE PARTIES DEFENDANT TO THIS CAUSE?

The Commissioner finds that all proper parties are before the Court to enable the Commissioner to respond to the questions in the Decree of Reference based on the evidence presented before the Commissioner.

6. WHAT IS THE FAIR MARKET VALUE OF THE REAL PROPERTY IN QUESTION AND THE ANNUAL RENTAL VALUE OF THE SAME?

No evidence was presented to the Commissioner on this inquiry.

7. A DETERMINATION OF THE RIGHTS AND LIABILITIES OF ALL PARTIES RESULTING FROM THE ACTIONS OF THE CITY OF POQUOSON IN APPROVING THE BOUNDARY LINE ADJUSTMENT PLAT BETWEEN THE DEFENDANTS, JOSEPH E. HURD AND ANNETTE HURD AND PETER H. CARR AND PEGGY L. CARR?

While the Complainants allege in their Amended Bill of Complaint that the Defendants conveyed an interest in property which they did not own and therefore was void, this Commissioner has heretofore found that they in fact did own the property in question and had the right to enter into a boundary line adjustment. Furthermore, the Complainants allege that the Defendants "fraudulently presented an erroneous plat to the plat approving agent for the City of Poquoson and that the plat approving agent

'erroneously' and 'wrongfully' approved" the division of the "Reserved" parcel thus effectively vacating the subdivision plat of "Holloway Forrest" without due process of law. At this point it is important to note that the Complainants in their Memorandum of Facts and Law and Statement of Facts do not argue or present any law to this Commissioner that the Respondents are guilty of fraudulent acts to support the claims made in the Amended Bill of Complaint. To the contrary, this Commissioner finds that the Complainants have lawfully acted in good faith and have been completely open in their dealings with the City of Poquoson. Furthermore, the City of Poquoson has acted in good faith with the Respondents.

8. WHETHER THE FACTS AND CIRCUMSTANCES SURROUNDING THE EVENTS SET FORTH IN THIS CAUSE OF ACTION GIVES RISE TO THE IMPOSITION OF A CONSTRUCTIVE TRUST ON THE PROPERTY IN QUESTION FOR THE BENEFIT OF THE SMITHS?

Again, no evidence indicates nor do the Complainants argue in their brief to the effect that a constructive trust was created in connection with this matter. The Commissioner hereby finds that no constructive trust has been created in this cause.

9. WHETHER THE PLAINTIFFS UNDER ANY CONSTRUCTION OF THE FACTS ARE ENTITLED TO A RIGHT-OF-WAY OVER THE PARCEL IN QUESTION; AND IF SO, A DETERMINATION OF THE NATURE AND LOCATION OF SUCH A RIGHT-OF-WAY?

The Commissioner has heretofore responded in full to the question presented by the complaints of easement by necessity and finds that the Complainants are not entitled to a right-of-way

over the parcel in question based on the evidence presented to the Commissioner.

10. ANY AND ALL OTHER MATTERS DEEMED PERTINENT BY SAID COMMISSIONER IN CHANCERY AND SUCH MATTERS CONCERNING WHICH HE IS REQUIRED TO REPORT BY ANY PARTY IN INTEREST, IF THE SAME BE PERTINENT TO THE ISSUES IN THIS CAUSE.

The Commissioner reports to the Court that he has worked on this cause during the following dates and times:

(1) June 24, 1986

Trip to Yorktown to review file; returned to office and communicated with all parties and sent Notice to Take Depositions out to all parties for August 15th

10:00 o'clock a.m. to 12:00 o'clock noon = 2 hours

(2) August 15, 1986

Depositions taken in the office of the Commissioner from 9:00 o'clock a.m. to 12:20 p.m. and from 1:15 o'clock p.m. to 3:30 p.m. = 5 hours 35 minutes

(3) March 26, 1987

Preparation of Commissioner's Report

2:00 o'clock p.m. to 5:00 o'clock p.m. = 3 hours

(4) March 30, 1987

1:00 o'clock p.m. to 5:00 o'clock p.m. = 4 hours

(5) April 2, 1987

1:00 o'clock p.m. to 5:00 o'clock p.m. = 4 hours

(6) April 9, 1987

2:00 o'clock p.m. to 4:00 o'clock p.m. = 2 hours

(7) April 16, 1987

10:00 o'clock a.m. to 12:00 noon = 2 hours

(8) April 24, 1987

11:00 o'clock a.m. to 12:00 noon = 1 hour

Total: 23 hours 35 minutes

Based on the aforesaid hours, the Commissioner's fee is Two Thousand Three Hundred Fifty and No/100 ($2,350.00) Dollars. Furthermore, the Commissioner reports that he has received a bill from Schneider Reporting Co., Court Reporter, as follows:

8/15/86 BENJAMIN W. WATKINS, et al vs. JOSEPH E. HURD, et al (appearance fee) ---------- $ 50.00
Transcription fee (original) ---------- 276.75
TOTAL ---------- $326.75

This Commissioner has heretofore responded to each of the questions propounded to him by the Decree of Reference in this cause entered on the 31st day of May, 1986.

Respectfully submitted,

Robert F. Ripley, Jr.
Commissioner in Chancery

CERTIFICATE

I hereby certify that I have mailed a true copy of the foregoing Commissioner's Report to Conway H. Sheild, II, Counsel for Joseph E. Hurd, Jones, Blechman, Woltz and Kelly, P. O. Box 78, Newport News, Virginia, 23607, to James H. Smith, Counsel for Benjamin W. Watkins, Hoyle, Corbett, Hubbard and Smith, 11048 Warwick Boulevard, Suite 201, Newport News, Virginia, 23601, to Ralph M. Goldstein, Counsel for Percy Smith and Edythe

Smith, Goldstein and Murov, 13195 Warwick Boulevard, Suite 2A, Newport News, Virginia, 23602, to Stephen D. Harris, Counsel for Peter H. Carr and Peggy L. Carr, McGuire, Woods and Battle, P. O. Box 379, Williamsburg, Virginia, 23187, and to Benjamin M. Hahn, Counsel for the City of Poquoson, 234 Wythe Creek Road, Poquoson, Virginia 23662, this 29th day of April, 1987.

Robert F. Ripley, Jr.

Filed in the Clerk's Office, Circuit Court, York Co., Va.
the 10th day of June 1987
Teste:
Edward H. Elliott, Clerk
D. C.

SCHNEIDER REPORTING CO.
STENOTYPE REPORTING
NEWPORT NEWS, VA.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS
FRANK H. WATKINS
ELSIE W. POOLE
VERNIE LEE W. ELLSWICK
AND
FRANCES WATKINS

vs.

JOSEPH E. HURD
ANNETTE HURD
PETER H. CARR
PEGGY L. CARR
GUY C. CHAMBERLAIN
KATHRYN B. CHAMBERLAIN
PERCY SMITH
AND
EDYTHE SMITH

Depositions of witnesses, taken before Robert F. Ripley, Junior, Commissioner in Chancery, pursuant to Decree of Reference, in the office of the Commissioner, 2174-C George Washington Memorial Highway, Grafton, Virginia, on August 15, 1986, at 9:00 a.m., to be read as evidence in the above entitled cause, pending in the Circuit Court for the County of York, at Yorktown, Virginia.

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PRESENT: 57

Mr. James H. Smith, Attorney for the Plaintiffs

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Mr. Conway H. Sheild, III and
Ms. Robyn C. Hylton, Attorneys for the Defendants, Joseph E. Hurd and Annette Hurd

Mr. Ralph M. Goldstein, Attorney for Defendants, Percy Smith and Edythe Smith

Mr. Benjamin M. Hahn, Attorney for the City of Poquoson

- - - oOo - - -

Schneider Reporting Company
11612 Warwick Boulevard
Newport News, Virginia 23601

SCHNEIDER REPORTING CO.
STENOTYPE REPORTING
NEWPORT NEWS, VA.

BENJAMIN W. WATKINS, called as a witness by the Plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Watkins, will you state your full name and your age and where you currently reside?

A My name is Benjamin W. Watkins. I'm sixty-eight years of age. I live at 38 Whetstone Drive, Hampton, Virginia.

Q And, Mr. Watkins, you're one of the Plaintiffs in this case that's here today, is that correct?

A I am.

Q And who are the other Plaintiffs that are named in the suit?

A My brother, Frank, Frank Watkins. I have a sister, Vernie Lee Ellswick, another sister, Elsie Poole, and sister-in-law, Frances Kemp Watkins.

Q And, Mr. Watkins, are you and your brother and sisters owners of a piece of real property located in the City of Poquoson?

A We are.

Q And how large is that piece of

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property?

A About two and a half acres.

Q All right. And approximately where is it located in the City of Poquoson?

A Well, it's -- it's off of Randolph Road, I believe, joining onto that.

Q How did you and your brothers and sisters come to own this property?

A This was left to us by our father.

Q And what was his name?

A William Leroy Watkins.

Q And where did he get the property from?

A It was left to him by his father.

Q And who was that?

A That was Jeremiah Watkins.

Q And to the best of your knowledge, did Jeremiah Watkins, prior to his death, also own the real property that became Holloway Forrest Subdivision?

A Jeremiah Watkins owned it all.

Q Owned all of that property?

A All of it.

Q When did your father die?

A In 1960. August, 1960.

Q And you and your brother and sisters

have owned the property ever since his death, is that correct?

A We have.

Q And you've paid taxes on that property ever since his death?

A We do, we pay the taxes.

Q Now, to your knowledge, does that property have any access to a public road?

A No.

Q Okay. In other words, this piece of property, as far as you know, is landlocked?

A It's landlocked now.

Q Were you ever given any notice of Holloway Forrest, any portion of Holloway Forrest plat being vacated from record or being done away with?

A No notice whatsoever.

Q Now, you say that -- it doesn't have any right of way now. Did it have a right of way at one time?

A Robert Watkins told us that it was a fifty foot right of way left to our property.

MR. SHEILD: I'm going to object to that, what Mr. Watkins may have told him.

MR. SMITH: Certainly that -- it's hearsay. It goes to reputation of title. And Mr. Watkins has been excused, or I would have had him here, and at this

point it's -- I'm unable to present that evidence through Mr. Watkins.

COMMISSIONER: But there's no indication that you will not be able to present the evidence at a later time, is there, at this time?

MR. SMITH: It doesn't look good.

COMMISSIONER: Well, it certainly is hearsay, there isn't any question about that.

MR. SMITH: I believe there's an exception to the hearsay rule, though, dealing with the reputation of title to land. If the people making the statements are unavailable for testimony --

MR. SHEILD: Mr. Commissioner, my problem with it, it appears to have been offered for the truth of the matter asserted, and, as such, it appears to be within the objection of hearsay.

COMMISSIONER: I'll tell you what, we will note your objection for the record, and we will proceed to let him make the statement, and your objection is duly noted.

BY MR. SMITH:

Q Did you think there was a right of way there?

A I did.

Q And why was that?

A What is that?

Q Why was that?

A Because he said so. Because Rob said there was a fifty foot right of way.

Q You didn't know exactly where that right of way was, did you?

A No, not exactly. No, I didn't.

Q And it was not until just recently that you found that the property did not have a right of way to it, is that right?

A That is right.

Q And this particular property has been in the Watkins family for over one hundred years, has it not?

A Over one hundred years the Watkins family has been paying taxes on this property.

Q And at this stage, you're unable to sell the property or do anything with it because of the lack of -- a right of way?

A That is right.

MR. SMITH: Answer any questions -- I guess we will start with Mr. Sheild, and then go around and then the Commissioner.

CROSS EXAMINATION

BY MS. HYLTON:

Q Mr. Watkins, my name is Robyn Hylton, and I represent the Hurds in this matter. I'm going to ask you a couple of questions. You said that, I believe you said your father died in 1960, and you took -- you and your brothers and sisters took title to the property?

A He left a will for us to have it, yes.

Q What did you do with the property from 1960 until the present day?

A We did nothing with it.

Q You said that it was not until recently that you discovered there was no right of way to this property. When you say "not until recently," when did you --

A When Mrs. Bev Bretana had the property surveyed, and she found out then the right of way, which we thought was there, had been sold to Mr. Hurd.

Q Okay, do you know approximately what year this was?

A That -- that was in the last two years.

Q Okay. You did nothing with the property, you and your brothers and sisters have done nothing with the property until the last two years?

A That's right.

MS. HYLTON: I have no further questions.

COMMISSIONER: Do you have any questions?

MR. GOLDSTEIN: Yes.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q When was the last time you were on the property?

A Well, I haven't been on the property no more than viewing it from the road.

Q What road is that?

A Randolph Road, so far as I can remember.

Q Where is Randolph Road in relation to this property?

A Do you have a map here? If you have a map --

MR. SMITH: I might as well do this now. I think --

BY MR. GOLDSTEIN:

Q I don't have a map.

A It would be hard for me to explain it to you --

COMMISSIONER: Let me take things slightly out of order, then, if he is getting ready to introduce a plat. What I would like to do, counsel, if everybody agrees, is to take the letter with the exhibits attached, that were sent by Stephen D. Harris to me, and make it an exhibit to be filed. Is there an objection to that?

MS. HYLTON: I'm not sure which plats are included in that.

(At this time, there was an off the record discussion.)

COMMISSIONER: With that, with no one objecting, I will mark this as Mr. Harris', Carr Exhibit Number One.

(At this time, the letter and attachments were received and marked as Carr Exhibit Number One.)

COMMISSIONER: And I will place that in the file.

Someone else wanted to offer an exhibit for the record, is that correct?

MR. GOLDSTEIN: Mr. Commissioner, I

have a plat of Holloway Forrest Subdivision, which is, I'm not sure of the plat book number. It's on Page 119.

MR. SMITH: Plat Book 7.

MR. GOLDSTEIN: Plat Book 7, Page 119 which I'd like to have identified as an exhibit, so that I can cross examine Mr. Watkins.

COMMISSIONER: All right. And in whose name do you want this as an exhibit?

MR. GOLDSTEIN: Put it in Smith Trustees' Exhibit Number One.

COMMISSIONER: For the record, I have marked this as Smith Trustees' Exhibit One, 8-15-86, and put my initials, RFR, Jr., for purposes of identification.

(At this time, the plat was received and marked as Smith Trustees' Exhibit Number One.)

BY MR. GOLDSTEIN:

Q I had asked you when was the last time you had been on the property, and you stated you hadn't been on the property, and then we got around to the last time you had seen the property, and you said you had seen it from -- I think it was some street that you mentioned that I wasn't familiar with. What was the name of that street?

A If I recall, I think it was Randolph Road is the street going down by there.

Q All right, would that possibly be Sir Ralph Lane?

A Well, okay, I'll have to back back. Sir Ralph Lane, I think that might be it.

Q Fine. Now, where were you when you saw the property? You were in the street there?

A On the street, right.

Q All right. And you don't have any recollection of going on the property when you were -- younger years, earlier years?

A I haven't been on the property, no time.

Q You never have been on it. How --

A No more than viewing it from the road.

Q Okay. So even before this sub-divison was built, you never went on the property?

A No.

Q Okay. Do you know if any of your brothers or sisters had gone on the property? Do you have any knowledge of that?

A Not as I know of.

MR. GOLDSTEIN: That's all the ques-

tions I have at this time.

MR. SMITH: Would you pass the exhibit back to me then?

COMMISSIONER: Mr. Hahn, do you have any questions?

CROSS EXAMINATION

BY MR. HAHN:

Q Mr. Watkins, I assume this was just woodland that was owned by your father, family never went on it or used it for any beneficial purpose, to your knowledge, is that correct?

A That is correct.

Q Do you know if your father made any use of it?

A No.

Q Did he live in Poquoson or did he live outside of Poquoson?

A He was born and raised in Poquoson until he got married, and then he moved to Hampton. That's where he resided the rest of his life.

Q Okay. Do you know if his father, Jeremiah Watkins, ever made any use of the property? Was he a farmer in that area or anything?

A So far as I know, I guess he farmed some and he oystered some and made a living like that.

Q Was there any type, have you ever, to your knowledge, was there any type of farm road or cart road going into this woodland?

A Not in this piece of -- no.

MR. HAHN: Okay. That's all the questions I have.

COMMISSIONER: Mr. Watkins, a moment ago you were talking about Mr. Watkins telling you about this right of way to the property. That was Robert J. Watkins, the attorney?

A Yes.

COMMISSIONER: What precipitated you asking him about a right of way to the property?

A He had developed the land, and he just said that. That he had left fifty foot right of way for us.

COMMISSIONER: I see.

MS. HYLTON: Our objection still applies to the testimony.

COMMISSIONER: Of course. When he told you there was a fifty foot right of way, he never took you out and showed you where it was, or anything such as that?

A No.

COMMISSIONER: I don't have any other questions.

MR. SMITH: Just a couple.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Watkins, Robert J. Watkins, is he related to you?

A He's a first cousin.

Q And he was the owner of the land that became Holloway Forrest Subdivision, was he not?

A Yes.

Q And was his father related to your father?

A They were brothers.

Q And to the best of your knowledge, did his father obtain that property from Jeremiah Watkins?

A Yes.

MR. SMITH: I don't have any further questions.

COMMISSIONER: Okay. Who is your next witness?

Can we excuse this gentleman?

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Number One.)

MR. SMITH: I think I'll call Frank Watkins before I call General Dickerson.

- - -

FRANK HOWARD WATKINS, called as a witness by the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Would you state your name and age and your current address?

A Frank Howard Watkins. I'll be sixty-six October the 22nd -- the 26th, 1920. Live at 439 Martha Lee Drive, Hampton, Virginia.

Q Now, Mr. Watkins, you're also one of the Plaintiffs in this case, are you not?

A Yes sir, I am.

Q And you're Ben Watkins' brother?

A I am.

Q And the brother of the other three ladies?

MS. HYLTON: I don't --

(At this time, the witness was duly sworn.)

BY MR. SMITH:

Q And you are also one of the owners of the piece of property that adjoins Holloway Forrest that's involved in this suit?

A Yes sir, I am.

COMMISSIONER: You're asking for Smith Trustees' Exhibit Number One?

MR. SMITH: Yes sir.

BY MR. SMITH:

Q Now, Mr. Watkins, this is a plat of Holloway Forrest Subdivision.

A Yes.

Q And to get you oriented, this is the Sir Ralph Lane (indicating).

A Right.

Q And this is Laydon Way, I believe there (indicating)?

A Yes.

Q Can you show the Commissioner where the property that you and your brother and sisters own is located with respect to Holloway Forrest Subdivision?

A Supposedly this property runs parallel with Sir Walter Lane, parallel back here (indicat-

ing), two and a half acres, approximately, in a rectangle shape. And I might add other property, my cousin's, adjoin it in rectangular shape.

Q Okay, now, there's another piece of property behind yours that is owned by other relatives of yours, is that correct?

A Owned by my cousin.

Q And was that piece also originally owned by Jeremiah Watkins?

A Yes sir, it was. This whole was -- owned by Jeremiah Watkins. At his death, it was divided among his children, which was Wilbur Watkins, Leroy Watkins, Waverly Watkins.

COMMISSIONER: Would you have him mark with an "X" and put the initials in the general location where he was identifying?

BY MR. SMITH:

Q Would you mark with an "X" in the general location where you say your property is and put your initials right beside that "X"?

(At this time, the witness complied with the request of counsel.)

MR. SMITH: Could he also put like the rectangle that he thinks that piece of land is and also

the rectangle for his cousin's piece of land?

COMMISSIONER: Yes. If you know where they are, sir.

A I don't know exactly. I can give you approximate, from seeing the plat, how it is.

BY MR. SMITH:

Q Okay.

A To my knowledge, I don't know how deep it is and so forth.

MR. HAHN: Would it help to introduce a plat of the property?

COMMISSIONER: Do you have it?

MR. HAHN: Well, I don't want to give up this one, but that is the plat that was submitted by Bev Bretana.

MR. SMITH: Is this of both parcels?

MR. HAHN: I believe it is.

(At this time, there was an off the record discussion.)

COMMISSIONER: Mr. Hahn, the only problem I have with this particular plat, and I don't mind it being introduced into evidence for what it's showing, but it's not signed by this surveyor. And I don't know whether this surveyor is going to stand behind this particular plat. But for general reference purposes, if

MR. HAHN: Nobody has to accept it.

COMMISSIONER: I've provided everybody with photocopies of the plat that Mr. Hahn exhibited a few moments ago, and I have marked my photocopy as Commissioner's Exhibit Number One, 8-15-86, RFR, Jr., and I'm going to pass this over now to Mr. Smith, so he can show it to his witness.

(At this time, the plat was received and marked as Commissioner's Exhibit Number One.)

BY MR. SMITH:

Q Mr. Watkins, we have a survey done here that we're not -- we don't know that it's absolutely accurate, because it did not have the surveyor's signature on it. But looking at that plat, to the best of your knowledge, does that pretty well portray where your property is located in relation to the Holloway Forrest Subdivision? Maybe I ought to turn that in the same direction.

A Yes sir, to the best of my ability.

Q Okay. And then that would lie just to the north of the lots that front on Sir Ralph Lane, is that correct?

A Yes sir. Lie to the north running east and west. Right, east and west.

Q As far as you know, the property adjoining that, that belongs to your cousins, also is landlocked, is that correct?

A To the best of my knowledge, yes.

MR. SMITH: Answer any questions any of the other attorneys or the Commissioner may have.

COMMISSIONER: If you finished with that exhibit, would you pass that back to me, please.

(At this time, the exhibit was handed back to the Commissioner.)

COMMISSIONER: Who wants to -- Conway.

CROSS EXAMINATION

BY MR. SHEILD:

Q Mr. Watkins, my name is Conway Sheild. I represent Mr. and Mrs. Hurd. I would like to ask you a couple of questions. Have you ever been on this property?

A No sir, I have never been on it. I have been on Sir Walter Lane, viewed it.

Q You mean Sir Ralph Lane?

A Sir Ralph Lane, drove down it, stopped

approximately three or four locations, looked back between the houses and between Hurd's and the other house, viewing what was supposed to be our property.

Q Okay, now, do you have any recollection of this property ever being used for anything other than woodland?

A No sir, not to my knowledge.

Q Okay. Was there ever a farm road or some sort of access road to this property you have viewed or been on?

A No sir. As it lay, when Jeremiah Watkins owned it, it was his son, Arthur Watkins, run the tombstone place on the corner, and they had a lane that went by the tombstone place down to Jeremiah's place and then on down to Arthur Watkins, which is Rob Watkins' father, and that was where Jeremiah lived on the place in this, all -- this acreage.

Q But that road would not have gone on this property?

A No sir.

MR. SHEILD: Thank you. Nothing further.

COMMISSIONER: Ralph, do you have any questions?

MR. GOLSTEIN: Yes sir.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Watkins, that road you were just talking about, go to the property?

A No sir. It just went to Jeremiah's home.

Q Now, referring to the Commissioner's Exhibit Number One, the piece of property that you and your brothers and sisters owned, that's shown as Parcel "A," is that correct?

A This goes into a cul-de-sac.

Q This is Sir Ralph Lane, and this goes into a cul-de-sac?

A I -- where is the road coming into here, to Sir Walter?

Q That would be Laydon, would be up this way (indicating).

A That's where you come into it. It looks like it's this parcel right in here (indicating).

Q And that is marked as Parcel "A," is that correct?

A Yes sir, to the best of my ability.

Q Now, this is the property that's owned by the Plaintiffs?

COMMISSIONER: Which piece is that, sir?

BY MR. GOLDSTEIN:

Q Parcel "A" is the part that you and your brothers and sisters own, is that correct?

A Supposedly, yes sir.

Q Do all of the Plaintiffs own this Parcel "A"?

A We all have, there's five of us. Five, and I have one-fifth interest in it.

Q Okay. This Parcel "B," you stated that had separate owners. You don't own Parcel "B"?

A Don't have nothing to do with it.

Q That Parcel "B" is owned by your cousins?

A J. P. Watkins. Wilbur Watkins' son.

Q That piece of property, you don't have any connection with?

A No sir.

Q All right. But it's your, based on your knowledge of this land, Parcel "B" is landlocked?

A To my knowledge, it's landlocked, the same as ours.

Q And there's no right of way to that

piece at all?

A Not to my knowledge, no sir, gentlemen.

Q And is there any right of way to that property from the subdivision of Holloway Forrest?

A No sir, not to my knowledge. None whatsoever.

Q And you have no recollection of ever being on this property before?

A No sir. It was all acreage until Rob Watkins was asked, from his father's part, until he developed, it was all acreage. Big farm, if you please.

MR. GOLDSTEIN: That's all the questions I have.

COMMISSIONER: Mr. Hahn.

CROSS EXAMINATION

BY MR. HAHN:

Q Mr. Watkins, your grandfather, Jeremiah Watkins --

A Yes sir.

Q Owned a large chunk of land.

A All woodsland and some was cleared, where he had his home and where Arthur lived, down south of

his father, Jeremiah.

Q Was that lane down where Laydon Way goes, approximately, now?

A No sir.

Q Where was that lane?

A If any of you remember, it was a tombstone place that Arthur Watkins ran right there in the corner opposite Dryden store.

Q Across from Amory's store?

A Amory's store, right across the road where the tombstone place, there was a little lane that ran from his place down to Jeremiah's place.

Q When the land was in a bulk, it was accessed through that lane?

A Right. As a matter of fact, when they had the funeral, the hearse that went in that lane to bring Jeremiah's body to inter it in Tabernacle Churchyard --

COMMISSIONER: Let me interrupt. This lane that you're describing, does it have anything to do with either the Parcel "A" that has been identified as the general area of the Plaintiffs' property, Complainants' property, or this piece of property that is marked reserved as Smith Trustees' Exhibit Number One?

MR. HAHN: It doesn't appear at this

time. I was trying to get an idea where the right of way into the bulk of the land was.

COMMISSIONER: Fine, as long as I understand, as Commissioner, this right of way you all are talking about doesn't affect either Parcel "A" or the parcel marked reserved.

MR. HAHN: No, apparently it was a farm lane going back to the dwelling house.

A You're exactly right, gentlemen.

BY MR. HAHN:

Q Now, when the land was owned in bulk by Jeremiah Watkins, was the portion that's indicated on this plat now or formerly Dryden, was that part of Jeremiah's property?

A Not to my knowledge, no sir.

Q So Jeremiah's property included all that eventually became Holloway Forrest, and your Parcel "A," as indicated on the Commissioner's Exhibit, and Parcel "B," which fell to Wilbur Watkins?

A Yes sir.

Q So Jeremiah's property was divided into three pieces, actually, the large chunk that became Holloway Forrest, your side of the family piece and Wilbur Watkins', is that correct?

A That's, to my knowledge, that's the

way it was.

MR. HAHN: I have no further questions.

COMMISSIONER: Anyone have any further questions of this witness? If not, then he's excused.

At the appropriate time, we'll get them to waive signatures, I take it.

MR. SMITH: Both of you, the Court Reporter has taken down all the questions and answers that you have given, and you have the right, once he types them all up, to come back and read over them and sign them. Or you can waive your signature, and just let him type them up. And he's going to file them with the Court. Of course, I'll review them, and we can't change them anyway once he's typed them up.

Would you agree to waive your signature to the depositions?

MR. B. W. WATKINS: Yes.

MR. F. H. WATKINS: Yes.

MR. SMITH: My next witness would be General Dickerson.

- - -

GENERAL GEORGE WILLIAM DICKERSON, called as a witness by the Plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Would you state your full name and your age and where you currently reside, please?

A What do you want my age for?

Q I can ask that of men. I have a little trouble with women.

A I'm George William Dickerson. I'm sixty-seven years old. I live in Poquoson, Virginia.

Q What's your street address there?

A 14 Carol Drive.

Q Now, General Dickerson, you were City Manager for the City of Poquoson for many years, were you not?

A That's correct, seven and a half years.

Q Okay. And we've already taken your deposition in this case, but you're familiar with the subject matter of this particular case that's here today, are you not?

A Yes.

Q Let me show you --

COMMISSIONER: You want to introduce his previous deposition?

MR. SHEILD: We have no objection.

MR. SMITH: I would like to introduce it.

COMMISSIONER: Let's do it at this time.

MS. HYLTON: Is that one marked up, too?

MR. SMITH: I'm sure it probably is.

COMMISSIONER: Excuse me. Do you want this marked Watkins Exhibit Number Two?

MR. SMITH: Yes. Is there any objection?

COMMISSIONER: Is there any objection to that?

MS. HYLTON: Except for the markings.

A At the outset --

COMMISSIONER: Wait just a minute, please, sir.

For the record, I'd like to note that the deposition of Mr. George Dickerson was taken on May 21, 1985, has been marked for purposes of identification --

of identification as Watkins Exhibit Number Two, 8-15-86, and my initials.

(At this time, the deposition was received and marked as Watkins Exhibit Number Two.)

COMMISSIONER: All right, would you proceed on?

BY MR. SMITH:

Q General Dickerson, I'm showing you a plat of the subdivision of Holloway Forrest, which has been marked as Smith Trustees Exhibit Number One, and I ask you whether you're familiar with the piece of land shown on this plat as reserve and abutting on Sir Ralph Lane?

A Yes, I'm familiar with that.

Q All right. And during your years as City Manager, did you have any dealings at all with this particular reserve piece of property?

A One, as I recall. A person living adjacent to this, and I don't have his name, I think he was -- a Greek in the construction business, and he asked me if he could buy the piece of land. I told him that it was reserved. He couldn't buy it. That was the end of it. I never heard from him since.

Q All right. Now, when you told him it was reserved, what did that mean to you at that time?

A Well, my assumption was it was reserved for right of way to the land east of that.

Q Now, in your position as City Manager, at that time, you were also the plat approving authority for subdivisions, were you not?

A Yes.

Q And under the subdivision ordinance of the City of Poquoson, at that time, was there a requirement that access be given to adjoining properties, which did not have any other access?

MR. SHIELD: I'm going to object. The ordinance will speak for itself on that point.

COMMISSIONER: You want to introduce the ordinance at this time, and ask him to identify the section in question?

BY MR. SMITH:

Q All right.

A This plat was approved --

Q Right, I understand.

A In '65 or something.

Q That was prior to your being there, is that correct?

A Yes.

was in effect at that time go into evidence.

MR. HAHN: Can't ordinances of localities be taken judicial notice of without any formal introduction of evidence?

COMMISSIONER: Yes, it can.

MR. HAHN: I mean we will authenticate whatever the '65 Code is. I have no reason to doubt that's not a copy of it.

COMMISSIONER: If there's no objection, then let me mark it for purposes of identification. For purposes of identification, I have marked this document as Watkins Exhibit Number Three, 8-15-86, and placed my initials, and apparently this was the subdivision ordinance that was in effect at the time that the plat in question was placed to record.

MR. HAHN: Is there an enactment date on the last page of that with reference to when it was adopted?

COMMISSIONER: No sir.

MR. HAHN: Okay.

(At this time, there was an off the record discussion.)

(At this time, the subdivision ordinance was received and marked as Watkins

Exhibit Number Three.)

BY MR. SMITH:

Q General Dickerson, the gentleman that you said that contacted you about buying that piece of property, would his name have been Ulisse?

A Yes, that's it.

Q And he made no further efforts to buy that piece, is that correct?

A Not to my knowledge. I mean -- not to my knowledge.

Q And then you left the position of City Manager for a period of time, did you not?

A Yes, not directly after that.

Q Right.

A Yes.

Q When did you leave as City Manager?

A '80 or '81. I don't really recall.

Q And did it come about that you again came back to that particular job?

A Yes, in the summer of '83.

Q And that was on an interim basis, is that correct?

A Yes.

Q And in that position, did you have another opportunity to become involved with this particular

piece of land?

A Yes.

Q And can you tell the Commissioner what that involvement was?

A I was presented a plat of this particular property showing how it would be sold, in other words, the configuration of how it would be sold. I studied it, I went to the files to find out what had happened. I found out that, I believe it was 1977, that that piece of property had been placed on the tax books, which --

COMMISSIONER: What piece of property are you talking about?

MR. SMITH: The reserved parcel.

A The reserve piece was placed on the tax records, and that the plat for that sale had been reviewed by the City, and they had commented on it that the boundary line could not go through the middle of the property because of the subdivision ordinance. You can't divide something that has already been divided, and this was a new plat. It conformed to all the ordinances of the City.

I discussed it with the Commissioner of Revenue, the Assistant Manager, who provided me the continuity of actions that had occurred, and so I signed the plat. There was no reason why I shouldn't have at that

time, in my view.

BY MR. SMITH:

Q Now, when you first saw this, what was your reaction to it at that time?

A Well, my reaction was, you know, what brought this about. I had been under the assumption during my tenure that it was -- it belonged to the City, actually, when the plat was recorded. The fact that the word "reserved" there, I think the City Attorney had ruled that Percy Smith reserved that unto himself, was the words he used.

Q Now, looking at that -- go ahead.

A In my view, took it out of the control of the City. It seemed to be between the seller and the buyer.

Q Now, looking at that particular reserve parcel on the subdivision plat, does that parcel appear to conform to any lot size requirements within that subdivision?

A No, I recall it is a fifty foot -- fifty foot.

Q Does it appear to have radiuses on it?

A Yes.

Q And could that -- what uses could

that piece of property have been made by itself individually?

A You couldn't build on it. You couldn't do anything to it. It appears to be a stub for a proposed or later road that would open up this land (indicating).

MR. SMITH: Answer any questions that any of the other attorneys might have or Mr. Ripley.

COMMISSIONER: Mr. Goldstein, we'll start with you.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q General, how long were you City Manager of Poquoson?

A Seven and a half years, I believe.

Q During that period of time, did you have occasion to look at other subdivision plats? That was part of your job was to sign off on these plats before they went to record?

A Yes.

Q And during that period of time, when you were signing these plats, do you know about how many you signed during that period?

A I don't have the slightest idea, but

it's over fifty, I guess.

Q All right. During that period of time, when you -- signed off on these plats, and a piece of property was being dedicated to the City for a street in a subdivision, did the City have any requirements for what was done with that dedicated property? Did it have to be asphalted, curb and gutter, or anything like that?

A No.

Q The City, the City streets in a subdivision plat were not required to be --

A All had to be, yes.

Q They all had to be?

A Yes.

Q The City require curb and gutter for right of ways?

A In the early years, no; but later, yes.

Q All right. And that included all of the dedicated portion, the part that was being used as a right of way?

A Yes.

Q All right. Now, did you ever have occasion,during your tenure as City Manager, to have a situation come up where the -- where you had a piece of landlocked property and the City required a right of way to

that property?

A Many times, yes.

Q All right. And it was part of your job to see to it that the street access was dedicated to the City?

A It was done so on the plat. In other words, I don't think that there was a special title for these right of ways. In other words, I think when the City accepted the plat, they accepted it as it was shown.

In other words, the right of way, the word "reserved" was not used in later years. I don't know why this one has the term "reserved" on it. Usually it says right of way or proposed right of way or something of that nature.

Q The term "reserved" during the period you were City Manager was not the term that was put on that piece of property that was supposed to be the right of way to the landlocked property?

A That's correct.

Q All right. It was just simply a continuation or a new street to the piece of landlocked property?

A That's right.

Q And would that portion of the property that was dedicated would have to be asphalted --

A It had to meet --

Q Curb and gutter, whatever it had? It wouldn't be left in its natural state?

A No.

Q Whether it was trees or open land or anything like that?

A No. Some of the area subdivisions were not that way, though. There are still examples of one or two subdivisions that I know of that have a little stub going off that hadn't been, one of them has curb and gutter on it, but the road surface itself has never been prepared. The land behind it has never been developed.

Q Do you recall the name of that particular subdivision?

A It's over next to where Mayor Bunting used to live, right adjacent to his house. What's the name of that subdivision? Banockburn, something like that.

MR. HAHN: Banner.

A I say again, these are very early subdivisions. In fact, one of the earliest, this one we're discussing today is one of the earliest ones in Poquoson.

BY MR. GOLDSTEIN:

Q But this designation of "reserved"

is not the usual designation for a piece of street that's going to be dedicated to the City?

A Not after -- not during my time.

Q Not when you were there, anyway?

A Not in my time.

Q This piece of property, the Plaintiffs are concerned about this piece of property right here (indicating).

COMMISSIONER: Where --

MR. GOLDSTEIN: I'm looking at Smith Trustees Exhibit Number One, and I'd like to have that other one that we used for identification purposes. I think that was Commissioner's Exhibit Number One.

(At this time, the plat was handed to Mr. Goldstein.)

BY MR. GOLDSTEIN:

Q This is the map of Holloway Forrest Subdivision. This is marked as Smith Trustee Exhibit Number One, and this is the Commissioner's Exhibit Number One, which, again, just to point out to you, this is Sir Ralph Lane right here (indicating). This is the reserve parcel that's in question right here (indicating), and Parcel "A" has been identified as the property that's owned by the Plaintiffs in this case, Ben Watkins and his brothers and sisters.

COMMISSIONER: Colonel, that means don't answer the question, and let's go on to the next question.

BY MR. GOLDSTEIN:

Q The only person you ever had contact with was Mr. Ulisse about buying that piece of property?

A To my knowledge, yes.

Q When you were -- when you came back for the short period as City Manager, and this matter with this parcel came up again, you looked in your file, and you said that the City had made a designation that the property could be sold if it were replatted. Was there an opinion letter by the City Attorney in the file, Mr. Gibson?

A Not that I recall.

Q Do you remember looking at a letter from Mr. Gibson or speaking with Mr. Gibson about it?

A I'm pretty certain I spoke to -- Jonathan Gibson.

Q All right. And --

A And he indicated that it was on the tax records, so it didn't belong to the City.

Q Had he indicated to you that he had made an opinion regarding the disposal of that piece of

property or had made an opinion to someone about that property?

A My recollection is yes, my staff and the legal people at that time convinced me that it no longer belonged to the City.

Q All right. And relying on that, and once you had the corrected plat down there, you signed off on that plat?

A I signed off.

Q There was some question the last time when we took depositions about a -- the plat you looked at, the one that was used for the subdivision. It had a designation on the plat as now or formerly Edbar Estates on the property that lied immediately to the north of that piece.

MS. HYLTON: Here's the original.

COMMISSIONER: Let's mark it then, if we're going to use it.

MR. GOLDSTEIN: Does everyone have a copy of this exhibit that was used in May of 1985?

COMMISSIONER: I don't.

MR. HAHN: I have a Xerox size copy, I think, showing the relevant portion. You're speaking about the physical survey.

MR. GOLDSTEIN: This is not the one

that the General would have signed. This is the one he would have signed (indicating).

MR. HAHN: This is what you're speaking of, Exhibit --

(At this time, there was an off the record discussion.)

COMMISSIONER: We'll mark it for identification at the appropriate time as Smith Trustees Exhibit Number Two.

BY MR. GOLDSTEIN:

Q General Dickerson, while the Commissioner is marking this plat that I'm showing you as Smith Trustee Exhibit Number Two, there was some question before, when we took depositions in this matter, about a designation that had been placed by the surveyor, identifying the property to the north of Sir Ralph Lane and this fifty foot parcel as -- on the plat that was presented to you for your signature. There was a designation at the top that said that this property to the north of the fifty foot strip was now or formerly Edbar Estate Corporation. Did that have any effect on your decision to sign the plat, or were you just relying --

A I don't think it affected my decision, but it made, I felt a little better about it inside. I mean --

(At this time, the plat was received and marked as Smith Trustees Exhibit Number Two.)

BY MR. GOLDSTEIN:

Q All right. When we -- when I was asking you questions just a few minutes ago about a letter from the City Attorney, did you have occasion to look in your file and see a copy of a letter regarding this piece of property that was from Jonathan S. Gibson, III, who was then the City Attorney, to me regarding this property?

A No, I don't recall. I don't recall.

(At this time, a document was handed to the witness for his perusal.)

BY MR. GOLDSTEIN:

Q Do you recall seeing that letter or reading that letter when you were reviewing the --

A Either I read the letter or I discussed with Jonathan Gibson this, because in words not common to me, it's "reserved unto himself" is in here.

Q All right.

A So I -- I can't swear I saw the letter. If it's in the file I saw it. But I'm familiar with the content.

MR. GOLDSTEIN: We would like to offer this, Mr. Commissioner, as our Exhibit Number, Trustees Exhibit Number Three, and that's the original, and I'd like to replace that with a copy, if that's all right with you. And I have copies of that letter for anyone who needs it. These are the extra copies.

MR. SMITH: I have no objection, Mr. Commissioner.

COMMISSIONER: I'm going to take this letter that is on the stationery of Mason, Gibson, Cowardin and Spencer, dated April 2nd, 1981, signed by Jonathan S. Gibson, III, and mark it as Smith Trustee Exhibit Number Three, and I'm going to date it 8-15-86, and put my initials, RFR, Jr., next to it for purposes of identification.

(At this time, the letter was received and marked as Smith Trustees Exhibit Number Three.)

COMMISSIONER: I'd like --

MR. SHEILD: For the record, I think all counsel have stipulated at this point this letter is admissible without having Mr. Gibson come and prove it.

COMMISSIONER: Also, at the appropriate time, when I do receive Smiths Trustees Exhibit Number Two back in here, which will bear the north arrow

and the language "now and formerly Edbar Estate Corp.," I will also put on that, for purposes of identification, Plat Book 9, Page 623, so we know where that came from.

MR. GOLDSTEIN: Was it 623 or 123?

MS. HYLTON: 623.

MR. GOLDSTEIN: 623, all right. I also have a letter from Charles E. Brown, Assistant City Manager, regarding this property that I would ask him to, General Dickerson to identify, but I think that letter has also been agreed upon as being admissible, and I'd like to submit that as Smith Trustee Exhibit Number Four for the file.

COMMISSIONER: If he can identify it, I still like for him to look at it, and see if he can identify it.

BY MR. GOLDSTEIN:

Q General Dickerson, did you have occasion, also, in reviewing your file on this property to come across that letter, dated August 11, 1981, addressed to me, from Charles R. Brown, Assistant City Manager?

A Yes, I -- I recognize this letter. It's in the City file.

MR. GOLDSTEIN: All right. We would ask that a copy of that letter be marked as our next exhibit.

MR. GOLDSTEIN: If I wrote the letter, whatever it says. I think that's what prompted his letter back to me, the letter of August 11th.

MR. HAHN: Yes, it's the missing link.

MR. SMITH: I have no objection.

COMMISSIONER: Let me read it first.

(At this time, the Commissioner read the letter.)

COMMISSIONER: All right, Mr. Hahn, if you want this marked for purposes of identification, I will, and I will mark it as City of Poquoson Exhibit Number One, 8-15-86, and put my initials, RFR, Jr., next to it.

(At this time, the letter was received and marked as City of Poquoson Exhibit Number One.)

CROSS EXAMINATION

BY MR. HAHN:

Q General Dickerson, I'm going to hand you three separate letters, the first being Smith Trustees Exhibit Number Three, which is Jonathan Gibson's letter of

April the 2nd, 1981, the second letter being the City of Pouqoson Exhibit Number One, which is the letter dated August 6, 1981, and the third being a letter dated August the 11th, from Charles R. Brown to, in reply to Mr. Goldstein, and that being Smith Trustees Exhibit Number Four. And ask you if you look at them in chronological order and see if you recollect them when they are together.

(At this time, the witness perused the documents.)

A Yes, to my knowledge, the only one I haven't seen is this City of Poquoson Exhibit Number One.

BY MR. HAHN:

Q Okay, Now, you were City Manager from 1972 until 1979; sometime in '79 you left?

A Right.

Q Okay, and then you came back acting in an acting capacity in 1983, is that correct?

A Yes.

Q Okay. And you had had no contact with this subdivision or anything in those four years of your absence, had you?

A That's correct.

Q Okay. Do you recall or you've testified,with this much time has passed, everyone's memory is somewhat foggy. Do you recall how this matter

came up to you when you were in your acting capacity as City Manager again?

A Yes, I think the second day that I was back, a plat was brought into my office for approval.

Q Do you remember who brought it in?

A My recollection is Jonathan Gibson, but I don't think -- I'm not absolutely positive of that, but it was someone in the legal field, I'll say, of my memory right now. The first day, the second day, and a lot of things going on. I took no action that day. I reviewed the files. I discussed it with Assistant City Manager, what had transpired, the Clerk of Council, the Commissioner of Revenue, and to my surprise, found out it was on the tax books.

Q Those three letters that I just passed to you to look at, would they have been in the file when you reviewed it at that time to the -- I'm certain you can't recollect --

A I remember two of them were in the file. The third one, the one I identified a moment ago, I don't believe was in the file.

Q So your second day back on the job, with no contact with this matter for four years, you find a letter from the then City or the City Attorney previously saying that the property should be placed on

the tax rolls and identifying what --

COMMISSIONER: I don't think that's what he said. I don't think that's what he said. I thought he said he found the property already was on the tax rolls.

A Yes.

MR. SHEILD: That's right.

BY MR. HAHN:

Q In reviewing the letter from Jonathan Gibson, that was done in 1981, expressing his opinion on it, you took that as the City position at that point?

A Yes, I believe I did.

Q Okay, and having that opinion having been expressed, and apparently whoever brought the plat in relied on that opinion, also --

COMMISSIONER: That's pure conjecture. I won't allow him to answer that. Go on to the next thing.

BY MR. HAHN:

Q Okay. In any event, you signed -- you signed off on the plat, based on the letter that was in the file from Jack Gibson, Jonathan Gibson?

A Plus my contact with my staff and with the Commissioner of Revenue, and I -- I thought that I discussed this with you. I may not have, but I thought I did at the time.

MR. HAHN: Okay. May I have that

COMMISSIONER: Sir Ralph Lane to be stubbed out in the easterly direction with an obvious dedicated public street, but yet for this reserve strip, that it would be named or marked as reserved as opposed to being a public street, at the time the plat went to record.

MR. HAHN: No, that's not my question.

COMMISSIONER: What is your question?

MR. HAHN: My question goes to action during his tenure. He's already testifed Mr. Ulisse asked him if he could buy the property. And I'm directing his attention to ask his opinion as during his tenure, what he would have thought the difference between this portion of Sir Ralph Lane that lies to the east of Layden Way, as compared with the reserve strip that's the subject of this litigation.

COMMISSIONER: Mr. Sheild, do you have an objection as to him answering that question, which is couched in language?

MR. SHEILD: If it is narrowly in those terms, I think that's probably appropriate.

COMMISSIONER: All right. That's the way I would interpret it only.

MR. SHEILD: Okay, fine.

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COMMISSIONER: Then you can answer that question, sir.

A All right.

COMMISSIONER: Do you understand the question?

A Yes, I think I do. I might say, first off, that there's no curb and gutter anywhere in this subdivision. We can rule that out. Sir Ralph Lane extension, at the time of my tenure there, was originally what we called surface treated. That's tar and gravel, not asphalt, but tar and gravel.

Now, there are two houses facing Sir Ralph Lane extension, so it would have been required that that be paved. At the reserve strip that's under discussion, that runs down the side of two homes that face Sir Ralph Lane, so I -- would assume that that is the reason it wasn't graveled.

BY MR. HAHN:

Q Okay.

A In other words, no one living on that street, it wasn't -- no one fronting it.

Q Okay, if, as is the contention of some of the parties to this litigation, that fifty foot strip were dedicated to the City, do you have an opinion as to -- and the land behind it, which is the Watkins

MR. HAHN: Yes sir.

A I trust you.

COMMISSIONER: Next witness.

MR. SMITH: Mr. John Dressler.

COMMISSIONER: I have received from Mr. Jake Smith the deposition of John H. Dressler, taken on May 21, 1985, and I have marked it as Watkins Exhibit Number Four for purposes of identification, and dated it 8-15-86, with my initials.

(At this time, the deposition was received and marked as Watkins Exhibit Number Four.)

COMMISSIONER: You can proceed.

- - -

ROGER SPEARMAN, called as a witness by the Defendants, Joseph E. Hurd and Annette Hurd, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEILD:

Q Your name is Roger Spearman, sir?

A Yes, it is.

Q Do you have any qualifications to prepare land surveys?

A I'm licensed by the State of Virginia, yes.

Q How long have you been so licensed?

A Eleven years.

Q Do you recall being engaged in this particular transaction by Mr. Hurd to do some work in the City of Poquoson, in order to get a certain parcel between his lot and one next to him in Holloway Forrest into his ownership, sir?

A Yes sir, I was retained by Mr. Hurd.

Q Now, in the course of your engagement, did you have any dealings with officials in the City of Poquoson, sir?

A Only indirectly through copies of correspondence from the Poquoson officials.

Q And did you prepare a plat in compliance with that correspondence, sir?

A Yes, I did.

Q Okay. Now, as you know, Mr. Spearman, this particular parcel in question was marked on the original 1965 plat of Holloway Forrest as reserved, and it was not of correct size for a building lot.

A That's correct.

Q All right, sir. And you were engaged basically to prepare not one but two plats, as I recall, sir, one was simply sort of a conveyance plat and one was to convey it to the two contiguous owners.

A That's also correct.

Q Okay, sir. I refer you now to the first plat. Do you recall what conversations you may have had with officials in the City of Poquoson, or what correspondence you received from them regarding the preparation of that plat, sir?

A I have a copy of a letter from Mr. Goldstein, which includes the copy of a letter from -- to him from Jonathan Gibson.

Q Would you state the date of that letter, sir?

A The Gibson letter?

Q Yes sir.

A The date of the Gibson letter is April 2, '81.

Q Okay. Mr. Spearman, I'm going to hand you what has been marked as Smith Trustee Exhibit Number Three, sir, and ask you if you can identify that letter.

A It appears to be the same letter.

Q It appears to be the same one that you had when you prepared the first plat?

A Yes sir.

Q Let me also ask you if you can take a look at Smith Trustee Exhibit Number Four. And would you, first of all, tell me if you have seen that letter before?

A Not to my knowledge. Let me check my file, just in case. It is not familiar to me.

MR. SHEILD: All right. That was the question. It is not familiar to you.

Let me return these exhibits, if I might, to the Commissioner.

BY MR. SHEILD:

Q Now, in preparation of Plat Number One, the earliest plat, you had that correspondence you just alluded to, Mr. Goldstein's letter and the April 2nd letter of Mr. Gibson, is that correct, sir?

A Yes.

Q Did you have anything else upon which to base that, what I will call the conveyance plat?

A You mean my authority for performing the work?

Q Yes sir. The question is, did you have any other conversations or contacts with Poquoson

officials before preparation of that plat?

A No, not to my recollection.

Q Okay, fine. Now, Mr. Spearman, there was, at a later time, you were engaged to prepare a boundary line plat between Mr. and Mrs. Hurd, who owned Lot Thirty-One, and Mr. and Mrs. Carr, who owned the lot to the east of the reserve parcel?

A That's right.

Q Okay, sir. Now, in the preparation of that plat, did you receive any authorization or guidance from the City of Poquoson officials in preparation of that plat?

A Not to my knowledge, no sir, not at that time.

Q Now, you recall, do you not, sir, there was a question of how this property was to be taken into the lots, this fifty foot, whether or not it was to be taken into the lots and simply divided?

A No, there was no real question at that time. I was directed by the Hurds to split the property in half. I have a letter here, I think, from the Hurds.

Q Mr. Spearman, I'm going to hand over a larger plat that you can take a look at, prepared by your office, apparently, and then I'm going to show you

a smaller version, which has been marked Smith Trustee Exhibit Number Two, and ask you if you can identify that.

(At this time, the witness perused the documents.)

COMMISSIONER: Anybody have any question or objection to him using the larger plat?

All right, pass my exhibit back to me, and let him use the larger plat, and we'll save time.

MR. SHEILD: Okay.

A I have to be perfectly honest and say I don't recall -- this plat, and, of course, it has been sometime ago, but, obviously, it was prepared by us and signed by us and was -- revised later. What is the date of this?

COMMISSIONER: Who signed it, Conway?

MR. HAHN: Roger Spearman.

A That's --

COMMISSIONER: Is that you?

A Yes, that is our plat. I -- what must have happened, we revised it at a later date. I'm just trying to compare the dates. I have a copy of that myself. Okay. All right. Yes, I do recall this now. This was purely and simply to incorporate the fifty foot strip into the Hurds' Lot Number Thirty-One.

BY MR. SHEILD:

Q That was -- my question was what did this plat purport to do, and that is your answer?

A The lot was a substandard, the fifty foot strip would be a substandard piece of land, and, therefore, could not stand on its own. And this plat was prepared to incorporate that by virtue of boundary line adjustment to incorporate that into Lot Thirty-One.

Q Okay, and also a portion was incorporated into the other lot?

A A portion of the --

Q The reserve parcel?

A Right.

Q So, basically, the plat purported, then, to incorporate portions of the reserve piece to each of the two contiguous lots?

A Yes.

Q Now, do you recall doing this plat after any discussions with Poquoson officials to resolve the problems of this reserved area?

A Only that the -- and this is purely from recollection, only that we did talk that the boundary line adjustment would be necessary.

Q But that conversation was with somebody at the City of Poquoson?

A To the best of my knowledge, yes,

and recollection. That was what prompted the need for the plat.

MR. SHEILD: That's all.

COMMISSIONER: Ralph, do you have any questions?

MR. GOLDSTEIN: Yes.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Spearman, this plat that has been referred to, and this is the larger copy of --

COMMISSIONER: Smith Trustees Exhibit Number Two.

BY MR. GOLDSTEIN:

Q Of Smith Trustee Exhibit Number Two --

COMMISSIONER: Which, I believe, was recorded in Plat Book 9, on Page 623.

BY MR. GOLDSTEIN:

Q That plat actually served as a replat of Lot Thirty-One and Lot Thirty-Two, showing their new boundary and what portion of the fifty foot right of way was to go with each lot?

A That is correct.

Q That was -- sometimes referred to as a replat of their respective lots to show their new boundaries.

COMMISSIONER: Is that a question?

A That would be fair to say. That would be a term that you could use, yes.

BY MR. GOLDSTEIN:

Q Replat, okay. So, basically, Lot Thirty-One is now Lot Thirty-One as shown in Plat Book 9, Page 623, and Lot Thirty-Two is as shown on the same plat?

A Yes.

Q Is that correct?

A Yes sir.

Q If I called you up to do a survey for a new loan on Lot Thirty-One, you would bring me back a drawing of all of Lot Thirty-One as shown in Plat Book 9, Page 623?

A That's correct.

Q Is that correct?

A Yes.

Q To the best of your knowledge, this has been signed by all of the proper City officials and put to record as any new subdivision plat would be?

A Yes.

Q Were you familiar with the Poquoson

subdivision ordinance that was in effect in 1965?

A Was I or am I?

Q Are you familiar with that. It may be -- still in effect. I don't know.

A We have copies of all the subdivision ordinances where we operate, in our office, yes. I may not have had it at that time. I don't know for sure.

Q Were you doing subdivision work or were you out of school then, in 1964, '65?

A No, I was not in the area at that time.

MR. GOLDSTEIN: I think that's all the questions I have.

COMMISSIONER: All right. Mr. Smith.

CROSS EXAMINATION

BY MR. SMITH:

Q Roger, when you first became involved in this, what did that fifty foot strip of reserve property appear to be to you at that time?

A Based on the original plat prepared by Baldwin and Greg out of Norfolk, it -- it could have been --

COMMISSIONER: Are you asking him for

speculation?

MR. SMITH: They have qualified him as a surveyor, and I think he can testify as to -- or give an opinion as far as -- you know, what that is shown on the subdivision plat to be.

COMMISSIONER: His opinion, yes.

A The interpretation, as I read the plat, is that the fifty foot strip,with the fillets, is reserved for future expansion of the right of way or road system within Holloway Forrest. However, the heaviness of the lines on the existing right of way, as shown on that plat, would lead me to think it is not an offer of dedication of that particular piece of land. Generally speaking, a dashed or dotted line would have been provided across the front of the strip as it abuts the road known as Sir Ralph Lane. So it's -- there are two interpretations for what that is.

BY MR. SMITH:

Q Well, that particular piece was not, it did not conform to any of the existing lots in that subdivision, did it, as a residential lot?

A No, it doesn't or didn't.

Q There's no indication on it that it was to be used for a well lot or pump station or anything such as that, was there?

A No, the statement is simply reserved.

Q And were all the other right of ways in Holloway Forrest Subdivision at that time fifty feet in width?

A I have to check the plat throughout. Yes, to the best of my knowledge, glancing at it, I would say that would be the case.

Q Did all intersections of streets in that subdivision have fillet curves and radiuses?

A Yes.

Q Have you been involved in your practice at all in the vacation of portions or all of any subdivision plats?

A At times, yes.

Q Are you familiar with the State Code as applies to the vacation of any portion of a subdivision plat?

A Only very vaguely.

Q You didn't find out from the City of Poquoson officials at all whether or not this particular reserved parcel had ever been vacated, this portion of the subdivision plat, did you?

COMMISSIONER: Doesn't that presume it's dedication?

(At this time, there

was an off the record discussion.)

BY MR. SMITH:

Q Did you discuss with any official from the City of Poquoson whether this portion of the Holloway Forrest Subdivision plat had ever been vacated?

A Whether any of it had been vacated?

Q Right.

A My only discussion would have been by phone as to the procedure for a boundary line adjustment within a subdivision.

MR. SMITH: I have no further questions.

COMMISSIONER: Mr. Hahn.

CROSS EXAMINATION

BY MR. HAHN:

Q Mr. Spearman, earlier it was my understanding that you testified that you reviewed some correspondence that had been given to you from the City of Poquoson and to the City of Poquoson, but you didn't really have any present recollection of ever discussing it with any official of the City. Is that correct?

A No. I said earlier that I had talked as to the -- in reference to the subdivision

ordinance, what the procedure is for a boundary line vacation.

Q Do you remember who you talked with?

A No, I don't.

Q And then you were provided copies of various correspondence?

A That's correct.

Q To and from the City?

A That's correct.

Q So when you first, when you drew the first two plats that Mr. Sheild was inquiring about, those were prepared merely on the basis of the correspondence, and it was at a later time, when you were preparing the boundary line adjustment plat, that you contacted the City regarding procedure?

A No, I would have to say the first small plats would have been done after having talked to them on the phone. The subsequent plats would have been following the same procedure.

Q Okay. So you prepared, your testimony or your recollection is that you prepared these plats after speaking with the City as to what was necessary to deal with this property, to get part of it in Lot Thirty-Two and part in Lot Thirty-One?

A To the best of my recollection, yes.

Q Okay.

A I would say this. At this time, that it's a pretty standard procedure throughout the locality, in which I practice, as far as combining a smaller piece of property with a larger piece of property in order to conform.

Q In a subdivision?

A In a subdivision, yes.

Q Is it pretty standard to do it where you got a reserve section that looks pretty much like a road leading back into another section?

A Yes, we have just done several very similar to this in the City of Williamsburg.

Q Okay. On the large plat, the boundary line adjustment plat, that you prepared, there is a notation on the vacant property to the north. Would you tell us what that is?

A Are you speaking of the now formerly Edbar Estates Corporation?

Q Yes. Do you have any knowledge of how that notation came to be on your plat?

A As I testified earlier, we don't accurately know how that got there. I very vaguely recall some conversations with Mr. Smith as to the ownership of that piece of property. The original plat of Holloway

Forrest does not cite adjacent ownership there, and I have no basis for it having been there other than a scribner's error, which, I think, I earlier testified to.

Q What exactly were the circumstances of you preparing these plats? Did Mr. Hurd contact you directly, or did Mr. Smith contact you, or how did you get involved in this?

A Mr. Smith ordered work involving that area in June of '81, and Mr. Hurd ordered work in June of '83. I've got the files confused somewhat here, but -- the work appears, by the dating, to have been originally prepared for Mr. Smith.

Q In '81?

A The plat that I have dated here is dated in March of '83. Now, that doesn't mean it is the original plat. We update plats and supposedly keep copies in the file of the previous plat, but I only see one dated March of '83 here, that being a small plat.

I'm sorry. Here is a copy, June 25, 1981. And it was updated in March of '83, and then we did the work for the Hurds in June -- June of '83.

Q That was the large boundary adjustment plat that was recorded?

A Yes.

Q So your contact was entirely with

the Hurds after the -- after '81, when you prepared the plat initially for Mr. Smith, and you dealt with the Hurds?

A No, we did subsequent work in '83 for, and this is in the Smith file, to show the amount of usage that was already being put to within that fifty foot strip, and that was in March of '83.

Q So the physical survey, dated March 14, 1983, was prepared at Mr. Smith's request?

A The file, it's in the Smith file and is styled Edbar Estates Corporation, so that's the assumption I made. I can check the invoice and see if that is, in fact, what he paid for. He was billed for that in March of '83. So the physical survey was -- for Mr. Smith.

Q And then sometime after you prepared the physical survey, you were contacted by the Hurds and prepared the boundary line adjustment plat, am I correct?

A Yes.

MR. HAHN: I have no further questions.

MR. GOLDSTEIN: I have some recross.

COMMISSIONER: Yes sir.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Going back to what you were just talking about, you did one plat for Mr. Smith in 1981, is that correct?

A That's true.

Q And that was the plat dated June 25, 1981, and that has already been shown as Hurd Exhibit Number One.

A June 25, 1981. All right.

Q And did you ever bill Mr. Smith for that plat?

A Yes.

Q Could I see the invoice for that?

(At this time, the document was handed to Mr. Goldstein.)

BY MR. GOLDSTEIN:

Q And then you said that you did a subsequent plat in March of 1983 for Mr. Smith, also?

A That's true.

Q And you have an invoice for that one?

(At this time, the document was handed to Mr. Goldstein.)

BY MR. GOLDSTEIN:

Q Okay. All right. And that, the purpose of that plat was to show the existing gravel driveway and whatever other improvements were located within the Sir Ralph Lane reserve parcel.

A Yes.

Q Is that correct?

A Yes.

Q And that did show Mr. Hurd's driveway going through that piece and the brick walk going into it?

A Connecting with the driveway, yes.

MR. GOLDSTEIN: I don't believe this plat has been --

MR. SHEILD: That was not introduced.

MR. GOLDSTEIN: Why don't we go ahead and mark that as Smith Trustee Exhibit Number Five, if that would be all right.

COMMISSIONER: Unless there's an objection to it. Any objection by anybody?

MR. SMITH: No objection.

COMMISSIONER: For the record, I'd like to note that I have marked this plat of the Edbar Estate Corporation, or at least that's what it purports to be in the name of, and it also purports to have been

recorded in Plat Book 7, Page 119, bearing a date of March 14, 19 -- I believe this is 1985.

A March 25 of '83, I think.

COMMISSIONER: Is that what it is? It says March 14.

A March 14.

COMMISSIONER: 1985. As Smith Trustee Exhibit Number Five, 8-15-86, RFR, Jr.

(At this time, the plat was received and marked as Smith Trustees Exhibit Number Five.)

MR. HAHN: Could I see that plat? You mentioned it was recorded.

MR. GOLDSTEIN: Not recorded.

COMMISSIONER: That's what it says.

MR. HAHN: It references Plat Book 7, Page 119. It isn't of record, to my knowledge.

COMMISSIONER: Okay.

BY MR. GOLDSTEIN:

Q Mr. Spearman, going back to the point of your testimony, where you were expressing your opinion for Mr. Smith, as to what some of the things on the survey meant. Looking back at Smith Trustee Exhibit Number One, which is the subdivision plat of Holloway

Forrest, I'm looking at the northerly extension, excuse me, this would be the easterly extension of Sir Ralph Lane as it goes between Lots Seven, Eight, Nine and Ten. What does that portion lying between those four lots indicate as to what the status of Sir Ralph Lane? Is that --

A As it lies north of Laydon Way.

Q That would be -- east.

A I'm sorry.

Q East of Laydon Lane.

A That's, to me, part of the main accessway that would lead back to Little Florida Road.

Q But --

A It would be part of the right of way system within Holloway Forrest.

Q That would indicate that this portion of Sir Ralph Lane has been dedicated?

MR. SMITH: Objection.

COMMISSIONER: I think he's -- just don't lead the witness.

MR. SMITH: He's leading.

MR. GOLDSTEIN: He's not my witness.

COMMISSIONER: That's right, he isn't. He has a right to lead him. Go ahead.

BY MR. GOLDSTEIN:

Q That would indicate to you that this portion of Sir Ralph Lane is a dedicated right of way to the then Town of Poquoson?

A It is an offer of dedication, yes sir.

Q All right. And, likewise, the same for Laydon Way from where it starts on Little Florida Road out to this cul-de-sac here at the end (indicating), is that correct?

A That's true, yes sir.

Q And the same for De Ayllon, that would also indicate that those are offered for dedication?

A Yes sir.

Q Is that correct?

A Yes.

Q And this reserved parcel would be something different?

A Certainly not to be taken into any right of way system by virtue of this plat.

Q All right. And it appeared to you that it would be access to this property back here (indicating), back to the north of the reserve parcel?

A At some future date possibly, yes.

Q But it did not -- it does not appear to you, because it is marked reserved, and because

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there's a heavy line on the southern portion of the southern boundary line of the reserved parcel, that that is -- clearly not an offer for dedication to Poquoson?

A That's correct. It is not part of the roadway system for Holloway Forrest.

MR. SMITH: I would object to that answer, Mr. Commissioner. I think that's the ultimate issue here, and I think that's the legal issue to be determined. And I don't think he's qualified to make that type of opinion.

COMMISSIONER: I'll note your objection.

MR. GOLDSTEIN: I think that's all the questions I have.

COMMISSIONER: Mr. -- try to keep this in some kind of order. I see -- Mr. Smith, do you have a question?

MR. SMITH: Yes.

CROSS EXAMINATION

BY MR. SMITH:

Q Mr. Spearman, you did testify in deposition in this case back on May 21, 1985, is that correct?

A Yes.

Q And do you recall being asked the question by --

COMMISSIONER: Wait just a moment. He's your witness, isn't he?

MR. SMITH: No.

MR. SHEILD: He's my witness.

COMMISSIONER: Fine, go ahead.

BY MR. SMITH:

Q Do you recall being asked a question by Mr. Hahn, and I'll read it. It says, "Was it evident to you when you were drawing up the plat that that was a fifty foot right of way shown on the plat of Holloway Forrest?" Do you recall --

A I don't recall the question or the answer.

Q All right. Then you don't recall giving an answer that "The configuration of the land showing fillet curves adjoining Sir Ralph Lane is a common way of showing intent to use the strip of land for ingress egress, and is also required by most municipalities as well as the State Highway Department for right of way."

A I testified the same thing today.

Q Then it was my understanding that you were saying that this was not part of any right of

way system?

A It is not. It's a future, for future use.

Q For -- what could that piece of property be used for?

A My interpretation of it right now is that the developers of Holloway Forrest had hoped to purchase or did, in fact, own the adjacent parcel to the north of that reserve strip, and that was to be used for access for future development. It's a common, it's a common design procedure.

MR. SMITH: I have no further questions.

COMMISSIONER: Mr. Hahn, did you have another question?

MR. HAHN: Just two, I believe.

CROSS EXAMINATION

BY MR. HAHN:

Q You say it's a common design feature. Drawing your attention again to that portion of Sir Ralph Lane that lies to the east of Laydon Way, can you explain to us why this was stubbed out to the adjoining property and the reserve piece is shown as it is?

BY MR. GOLDSTEIN:

Q You had a letter from me in that file?

A Yes.

(At this time, the document was handed to Mr. Goldstein for his perusal.)

MR. GOLDSTEIN: Okay, if I may re-cross?

COMMISSIONER: Yes.

BY MR. GOLDSTEIN:

Q What I had sent to you, I think you referred to, you had a letter from me in your file. This is the letter that's dated June 22, 1981?

A Yes.

Q And I sent to you at that time, for your benefit in preparing a plat, a copy of that letter from Jonathan Gibson, who was the City or Town Attorney for the -- for Poquoson, City Attorney for Poquoson.

A Yes.

Q You used that, that's clipped to that letter from me regarding the division of the property, if it were to be divided, is that correct?

A That's true.

Q So you did have, indirectly, the

opinion of the City Attorney regarding that piece of reserve property?

A Yes, as I said earlier.

MR. GOLDSTEIN: That's all the questions.

COMMISSIONER: All right.

MR. SHEILD: Mr. Spearman, you have a right to read this deposition, once it is typed, and then sign it, or you can trust that the Court Reporter will accurately take down what you have said today, and you can waive your signature, which means you do not have to sign it before it becomes part of the record. Do you want to waive your signature?

A I have no reason to doubt the Reporter's accuracy.

MR. SHEILD: Tell him you waive, then.

A I waive it.

MR. SMITH: I have no further witnesses.

(At this time, the taking of the depositions was recessed, after which it was reconvened.)

COMMISSIONER: At the direction of

PERCY SMITH, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Smith, this is a letter, copy of a letter -- will you state your name, please?

A Percy Smith.

Q And, Mr. Smith, you were the same Percy Smith, Trustee in the deed from the Trustees of Edbar Estates Corporation, a dissolved Virginia corporation, to Mr. and Mrs. Hurd, of the fifty foot parcel that's now in question in this suit, is that correct?

A Yes.

Q And, Mr. Smith, do you recall back in March of 1983 writing a letter to Lieutenant Colonel Joseph E. Hurd regarding this fifty foot parcel?

A Yes.

Q Now, this is a copy of that letter (indicating), is that correct?

A Yes.

MR. GOLDSTEIN: And it's been agreed, Mr. Commissioner, by counsel to mark that as the Hurd Exhibit Number Two.

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BY MR. GOLDSTEIN:

Q This letter was written to them prior to the time that you conveyed the reserve parcel to them, is that correct?

A Yes.

COMMISSIONER: I have so marked it as Hurd Exhibit Number Two, August the 15th, 1986, with my initials. All right.

(At this time, the letter was received and marked as Hurd Exhibit Number Two.)

MR. GOLDSTEIN: That's really the only reason why we are going over that. I have no other questions to ask him at this time.

COMMISSIONER: Anyone have any questions to ask this gentleman?

All right, there are no questions then. Would you please explain to him his rights concerning the waiving.

MR. GOLDSTEIN: You have the right to come back and read your deposition, after it has been typed, or you can waive your signature, relying on what Mr. Schneider has taken down as being accurate. If you want to waive, then you just say, "I waive my signature."

A I waive my signature.

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MS. HYLTON: We have agreed that his deposition is admitted.

COMMISSIONER: It's already in.

Next witness.

MR. SHEILD: We call Colonel Hurd.

- - -

JOSEPH E. HURD, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEILD:

Q Would you please state your full name for the record, sir?

A Joseph E. Hurd.

Q Mr. Hurd, you are a Defendant in the present action before us today?

A Yes.

Q Okay. Do you own Lot Thirty-One, Holloway Forrest, Poquoson, Virginia?

A Yes.

Q You still do?

A Yes.

Q There was a time you lived in that house, is that right?

A Yes.

Q Turning your attention to the matters in question today, were you ever approached by any party toward buying the piece of land which lies to the east of Lot Thirty-One?

A Yes, I was.

Q Would you please explain that, sir?

A In some detail?

Q Well --

A Roughly, December of '82, we had a call from a realtor, Sears, I think was the name, and offered to buy that parcel of land, and --

Q You mean offered to sell it?

A Offered to sell it, and the price was Fifteen Thousand Dollars. I talked to him and told him I wasn't interested in that particular parcel of land at that price. Later, the exhibit that you all talked about as a formal letter came from Percy Smith.

Q You're talking about Hurd Exhibit Number Two?

A Hurd Exhibit Number Two.

Q Which is a letter from Percy Smith, Incorporated, addressed to you, dated March 23, 1983.

All right, sir. Go ahead.

A That letter was delivered to the house, and although still not wanting to pay the price, I contacted my lawyer, and after his advice, went and negotiated a price for the land, for roughly Ten Thousand Dollars. At which time I bought the land from Percy Smith.

Q All right. Now, Mr. Hurd, why was this particular land and its purchase important to you?

A The land was important to me because without that land, and not being able to use it, I could not use the driveway, which was laying inside the land, or I could not get to my own garage. My house was situated so that without that land, I would be denied access to my garage.

Q Did you have any notion who owned that land when you bought the house?

A Yes, I was told that the developer owned that land, and that one of two options were probably available. One was either purchase the land at some later date, or that the land could not be developed because of the size of it, and that if the developer ever used the land, it would be to open up the street to develop the property behind, but that the developer owned the land.

Q Who made that representation to you, do you know?

A We discussed that during closing, and I believe --

Q Real estate agent?

A The real estate agent was there, and also you were there, and that was the discussion.

Q Okay, the agent made that statement to you?

A Yes.

Q Okay. Now, after you had reached a price with Mr. Smith that was agreeable, what was your next action?

A My next action, since partial of that piece of land actually was in front of my neighbor's house, Mr. Carr, and through a natural tree line, I did not particularly want that piece, and so I contacted him and agreed to sell him ten feet as a separate and distinct action, and that is the part that -- curved out in front of his own front door and the natural tree break line. He got ten feet, and I took forty feet, and we were -- both in agreement to that.

Q But you -- did you then engage a surveyor?

A Yes, I did. I went back and used Mr. Spearman, because he had knowledge of the previous plot, having just done it, and I told him it would be the

easiest for him to do that and divide that land.

Q Now, you heard his testimony this morning, that he had some contact with the City of Poquoson in preparation of those plats. Did you have any contacts with the City officials?

A Only after the fact, in that he sent the plats to us, and my wife carried them actually up to the City building and had them signed up there. That was all.

Q You did not negotiate with the City as to what they would require to get the plats approved?

A I did not personally, no.

Q Now, do you recall how it came to be that the fifty foot strip was to be incorporated into the two lots, one that Mr. Carr owned and one that you owned?

A Well, when I purchased the first time, it actually stayed as a separate fifty foot parcel, because I even paid taxes on that separate fifty foot. When we wanted to subdivide that, divide it up between Mr. Carr and myself, again I think through the legal, my legal attorney, it was determined that that land would have to be incorporated into the existing lots. In other words, we couldn't end up with two separate parcels ten foot wide, Mr. Carr owning a ten foot wide lot, and me owning a forty

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foot lot, plus my house lot. It would all be redone and included within the existing boundaries.

Q Now, after this land was actually incorporated into one lot, there came a time when you tried to sell this property, sir?

A Yes, I did.

Q And what happened to that sale?

A The sale, I had the house sold in June of 1984, and, well, let's back up just a little. In December, again of 1983, we received a letter from Mr. Elliott advising us that we had taken title to land, which had been set aside for a street, and again I contacted my legal attorney and turned that problem over to him. And he started working to solve that. I was moving from the area and went ahead and sold the house.

And in order to prevent that sale, I think it was Mr. Elliott still at that point representing the Watkins', they stopped the sale or put a, whatever the legal term is, a lien on my property and prevented me from selling the house. And that was in the summer or June of '74.

Q '84?

A '84, I'm sorry.

Q Since that time, that house has still been tied up?

A That house has still been tied up, and I have been forced to rent the house.

Q What happened to the person who was going to buy it?

A The first people, because we could not solve the dispute over the land, basically would not buy the house. Because they did not want to get in there and find out they had less land or -- than what they were looking at at the time. So they refused to buy the house.

Q So the property is still in your name and your wife's name to this day?

A Yes.

Q Mr. Hurd, when you bought the property, were you aware who the owners were behind you?

A No.

Q When did you become aware that the owners behind you wanted to do something with their property other than leave it as woods?

A That was roughly in December of '83, when we received the letter from the -- from Mr. Elliott. I think almost simultaneously with that, maybe two to three weeks prior to that, the first information was that Bev Bretana knocked at our door and asked questions about that right of way back there. And as to how that had become my property. And I think that's actually the first indica-

tion I had that -- and that's when I, and she said she was a friend of the Watkins' and was asking as a favor to them as to how I obtained title to that. So somewhere in that, last of November, first of December of '83.

Q Watkins had never approached you?

A No.

MR. SHEILD: No further questions.

COMMISSIONER: Anyone have any questions of this gentleman?

MR. SMITH: I don't have any.

MR. GOLDSTEIN: I have no questions.

MR. HAHN: I have no questions.

COMMISSIONER: I have no questions.

MR. SHEILD: Colonel Hurd, as you may have heard previously today, you have a right, after these depositions are transcribed and typed, to read them and sign them, indicating at that point that they are accurate. Or if you want to trust the stenographer here --

MR. GOLDSTEIN: I want to ask him about the -- just a couple of questions.

COMMISSIONER: Certainly.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Hurd, when you moved into the property, up until the time you purchased it from Mr. Smith, was that reserve parcel ever developed in any way? Was there a road there or curb and gutter or anything like that there?

A There was -- only that that had been developed by the previous landowner of my house, Mr. Ulisse.

Q What had he done?

A He had, basically, put a gravel road through part of the property.

Q That was the road that showed up on the exhibit?

A Yes. It is a driveway, not a road.

Q Was there any, what would appear a City street or right of way, like Sir Ralph Lane --

A No.

Q That went back there?

A No.

Q There was just a small curb cut, I guess you would call it, for the gravel road that went to your driveway?

A Since there's no curbs in that particular subdivision, there was one of the tile concrete, I don't know, where the water runs through and piece of

concrete over that and led to the gravel driveway.

Q Like an apron?

A Yes.

Q Driveway apron?

A Very narrow, though, single car.

Q And the rest of the right of way -- not the right of way, but the rest of the fifty foot reserve piece, that was in trees and grown up?

A Trees, and grass had been mowed, and that was all.

MR. SHEILD: Let me ask one question.

COMMISSIONER: Go ahead.

REDIRECT EXAMINATION

BY MR. SHEILD:

Q Did that gravel driveway of yours serve any other use other than to get to and from the street to your garage?

A No.

MR. SHEILD: Thank you.

MR. HAHN: Let me follow up on that line of questioning.

RECROSS EXAMINATION

BY MR. HAHN:

Q When you bought the property, you had a plat done for your mortgage, I assume?

A Yes.

Q Did you have any question about your right to use that right of way?

A As I stated, I questioned that and was told that the developer owned it, and that it could never be built on or used for any other purposes. That probably one of two options were there, either I could buy the piece of property later, or if he opened up the development behind, then that would be turned into a street. But it was developer owned and so at that point --

Q When did you purchase your house?

A August of '81.

Q Was there any discussion of the owners to the east, behind your property, being able to use your driveway to get to their property?

A No.

Q Were you under the impression they could use it?

A No.

Q You thought that driveway was for

your exclusive use alone?

A Mine and the owner's.

Q Yours and --

A Mr. Smith could obviously use it. He owned it.

MR. HAHN: That's all the questions I have.

COMMISSIONER: All right, if there are no other questions, you want to finish up?

MR. SHEILD: Before I was so rudely interrupted, Colonel Hurd, you have a right to read these depositions and insure their accuracy and sign them, or you can trust the stenographer will accurately transcribe what you said and waive your signature to these depositions, which means they will be turned in without you having verified first they're accurate by your signature. Do you care to waive your signature?

A I waive my signature.

COMMISSIONER: Any other witnesses?

MR. SHEILD: No sir.

COMMISSIONER: If there are no other witnesses, I take it we'll conclude the depositions at this time.

MR. SMITH: I would concede, as counsel for Plaintiffs, that we cannot sustain any provable

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et als,

Plaintiffs,

vs. Chancery No. 6286

JOSEPH E. HURD, et als,

Defendant.

EXCEPTIONS TO REPORT OF
COMMISSIONER IN CHANCERY

NOW COME the plaintiffs, by counsel, and file the following exceptions to the report of ROBERT F. RIPLEY, JR., Commissioner in Chancery, heretofore filed in this cause:

1. The Commissioner erred in finding that the boundary line adjustment between defendants, CARR and HURD, approved by the City of Poquoson on August 18, 1983 was valid. The Commissioner completely ignored §15.1-482 of the 1950 Code of Virginia, as amended, which provides only two methods of vacating a subdivision plat or any portion of such plat. Neither method was complied with in this case and the boundary line adjustment was an illegal act and void.

2. The Commissioner erred in finding that the "Reserved" parcel was never dedicated to the Town of Poquoson (now City of Poquoson) as a public right-of-way or street. The evidence before the Court is abundant that the principals involved in the original subdividing of "Holloway Forrest", namely, ROBERT J. WATKINS and PERCY SMITH, intended and believed that the "Reserved" parcel had been dedicated to the Town of Poquoson. It

was also clearly presented by testimony that the officials for the Town considered that parcel as public property from 1964 to at least 1977.

The Town of Poquoson subdivision ordinance in effect at the time of subdivision required access to plaintiffs' property and the "Reserved" parcel was incorporated in the plat to meet that requirement.

3. The Commissioner erred in finding that §15.1-478 of the Code of Virginia did not apply to the "Reserved" parcel so as to make the recordation of the subdivision plat act to transfer the fee in said parcel to the municipality. The Commissioner incorrectly interpreted the statute to mean that since it did not specifically prohibit a developer from reserving property from the application of the statute, then a developer could avoid the operation of said section by merely marking what was obviously proposed as a street as "Reserved".

The Commissioner relies on the case of Brown v. Tazwell County Auth., 226 VA 125 in reaching his conclusion that there was no statutory dedication of the "Reserved" parcel. However, Brown does not present the same issues as the present case before the Court. In Brown, the subdivision plat had never been submitted to or approved by the Tazwell County subdivision officials. Because of this, the Court found that the mere recording of the subdivision plat without the proper governmental approvals, did not trigger the provisions of §15.1-478. The

Court went on to say at page 130-131 that "Because mere recordation of a properly approved subdivision plat now vests fee simple title in the governing body as to all streets shown thereon, the requirement of prior approval by competent public authority is indispensible". The Court in Brown clearly recognized the acceptance of a dedication by the governing body when it approves a subdivision plat for recordation.

The Commissioner seems to also rely on the fact that there are no express terms shown on the subdivision plat to indicate that the "Reserved" parcel was intended as a street, alley or other public use as set out in §15.1-478. In view of the testimony of ROBERT J. WATKINS and PERCY SMITH and the fact that the "Reserved" parcel complied in every way with the layout requirements of the subdivision ordinance for a residential street, the Court would have to be naive and bury its head in the sand to find that the "Reserved" parcel was not set out on the subdivision plat as a street.

4. The Commissioner erred in applying the partial acceptance doctrine of a dedication of property for public use. In the instant case there is testimony by ROBERT J. WATKINS, who was the Poquoson Town Attorney at the time of the approval of the subdivision plat, that the "Reserved" parcel went to the Town. GEORGE W. DICKERSON testified that as Town and City Manager, he had always considered the "Reserved" parcel as public property and, in fact, on several occasions had advised citizens that the

property could not be purchased or used except for City purposes. These actions by public officials for the City of Poquoson clearly indicated acts of dominion or implied acceptance by the governing body of the "Reserved" parcel of land.

5. The Commissioner erred in finding that plaintiffs were not entitled to a right-of-way for ingress and egress to their property by necessity. He was correct in his analysis that plaintiffs had met their burden of showing that the proposed dominant and servient estates had originally been held by a common grantor, that the common grantor had divided the property and that there was no express grant or reservation of a right-of-way for access to plaintiffs' property.

The Commissioner, however, incorrectly applied the law set out in Middleton v. Johnson, 221 VA 797 and Fones v. Fagan, 214 VA 90 to the present case. He interpreted those cases as requiring plaintiffs to prove by clear and convincing evidence that they could not obtain any access to their property except over the lands of defendant HURD and CARR.

However, in both Middleton and Fones there was evidence that the dominant estates had, at least at times in the past, had other physical ways of access and the parties seeking the establishment of a way of necessity did not provide any evidence that these ways of access were not now available. In the instant case there has been no showing that there was ever any other access to plaintiffs' property. In fact, the Commissioner noted

that counsels for both plaintiffs and defendants had found no evidence of record or on the ground of an easement for ingress and egress to plaintiffs' property. Plaintiff, BENJAMIN WATKINS, testified that he was unaware of any access to the plaintiffs' property and this was corroborated by the testimony of ROBERT J. WATKINS.

None of the defendants provided any evidence of any other access, either present or past. Had there been any evidence presented that another way existed, plaintiffs would have been burdened to show that this way was no longer available and could not be re-established. Since there was no such evidence of another way and there was affirmative evidence that, in fact, there was no other access, plaintiffs met their burden of showing necessity as required by Middleton.

6. Plaintiffs except to the fee charged by the Commissioner as being unreasonable and excessive.

For the above stated reasons, plaintiffs pray that the Commissioner's Report be overruled and set aside and that judgment be entered in favor of your plaintiffs.

BENJAMIN W. WATKINS, et als

By James H. Smith
Of Counsel

James H. Smith, Esq.
HOYLE, CORBETT, HUBBARD & SMITH
11048 Warwick Boulevard
Suite 201
Newport News, Virginia 23601

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of May, 1987, a true copy of the foregoing pleading was mailed to all counsel of record.

JAMES H. SMITH

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et als,	:	
Plaintiffs,	:	
v.	:	Chancery No. 6286
JOSEPH E. HURD, et als,	:	
Defendant.	:	

N O T I C E

TAKE NOTICE that on the 9th day of June, 1987, at 8:00 a.m., or as soon thereafter as this matter may be heard, the undersigned will move the Circuit Court for the County of York, Virginia, at the Court Room thereof for the following:

1. To overrule the Exceptions to the Report of the Commissioner filed by plaintiff and to sustain said report; and

2. Further, that the Report of the Commissioner in Chancery be incorporated into a Final Order of this Court, adjudicating the issues involved.

You must take due Notice, and govern yourself accordingly.

JOSEPH E. HURD

By _____
Of Counsel

Conway H. Sheild, III
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
2600 Washington Avenue, Suite 700
Post Office Box 78
Newport News, VA 23607

W OFFICES
HMAN
TZ & KELLY, P.C
Washington Avenue
port News, Va.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice was mailed this 15th day of May, 1987, to James H. Smith, 11048 Warwick Boulevard, Suite 201, Newport News, Virginia, 23601, counsel of record for the plaintiffs, to Benjamin M. Hahn, counsel for defendant, 534-D Wythe Creek Road, Poquoson, Virginia, 23662, and to Robert F. Ripley, Commissioner, 2174-C George Washington Memorial Highway, Post Office Box 1749, Grafton, Virginia, 23692.

Conway H. Sheild, III

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COMMONWEALTH OF VIRGINIA

NINTH JUDICIAL CIRCUIT

COURTS

CHARLES CITY COUNTY
GLOUCESTER COUNTY
JAMES CITY COUNTY
KING AND QUEEN COUNTY
KING WILLIAM COUNTY
MATHEWS COUNTY
MIDDLESEX COUNTY
NEW KENT COUNTY
YORK COUNTY
CITY OF POQUOSON
CITY OF WILLIAMSBURG

June 16, 1987

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McGuire, Woods and Battle
P. O. Box 379
Williamsburg, VA 23187

Re: Benjamin W. Watkins, et al
v.
Joseph E. Hurd, et al al
Circuit Court of York County
Chancery No. 6286

Gentlemen:

I have now reviewed the transcript which was received on June 10, 1987, and will rule on the Exceptions to the Commissioner's Report as follows:

Exception No. 1

The Court sustains the exception. While interior boundary lines may be adjusted without resort to Section 15.1-482 -- the vacation of subdivision plats or portions thereof -- the Court finds that the subject property marked "Reserved" was, in fact, dedicated to the Town of Poquoson, is a public right of way or street, and accordingly, the street was not vacated in accordance with Section 15.1-482.

Exception No. 2

This exception is sustained. The Court finds that the property marked "Reserved" was dedicated to the Town of Poquoson as a public right of way or street. Section 26-34 of the Town of Poquoson Code required that streets shall be provided as necessary to provide access to any such area as may not already be provided with existing or platted streets. Furthermore, Section 15.1-478, Code of Virginia, provides that fee simple shall be transferred to the municipalities "as is on such plat set apart for streets, alleys or other public use." This reserved area was set apart for public use for the reasons herein noted. The subdivision plat of Holloway Forrest Subdivision which is recorded in the Clerk's Office of the Circuit Court of York County, Virginia, on June 29, 1965, and which had been previously approved by William P. Larew, Town Manager for the Town of Poquoson, shows the reserved property to have the configuration of a street and to connect Sir Ralph Lane with the property of the said Complainants. Robert Watkins, who drafted the Ordinance and was Town Attorney when he conveyed the property to the subdividers, first required the reserved area in order to comply with the Town Ordinance and, secondly, in order to give his cousins access to a public street. The property owned by the Complainants had no other access for ingress and egress to and from any public way. The subdivider believed that the reserved area existed as a way of ingress and egress and further that the reserved area had been dedicated. The property was not taxed for several years. The City Manager, Mr. Dickinson, believed the reserved strip would be dedicated to the Town. The totality of the

evidence is such that the reserved area was dedicated in order to comply with the Town Ordinance. It must further be assumed that the government of the Town of Poquoson intended to comply with its own Ordinance and would not have violated the law as it then existed. The fact that the property is enitled "Reserved" rather then given a street name or some other designation, such as "Reserved for public use" does not alter the facts as they existed, or change the character or status of the reserved area.

Exception No. 3

The Court sustains the exception and notes that while land may be reserved by a subdivider to be disposed of as he may determine, the subdivider, nevertheless, may not claim title to a reserved area which is required for public use by law.

Exception No. 4

The Court sustains the exception. In the case of Ocean Island Inn v. Virginia Beach, 216 Va. 474, 479, the law of partial acceptance is recited as follows: "...where a governing body has accepted part of the streets appearing on a recorded plat and no 'intention to limit the acceptance' is shown, such partial acceptance constitutes acceptance of all of the streets, provided the part accepted is sufficiently substantial to evince an intent to accept the comprehensive scheme of public user reflected in the plat." The Town did exercise dominion of the remaining streets in the Holloway Forrest Subdivision and, in fact, all the remaining streets were paved and are now public streets. This last statement, however, is made subject to this proviso: I find no evidence to indicate that the remaining streets were accepted and paved and that dominion has been exercised over the public ways. I know, as a matter of fact, that acceptance did occur over the remaining streets as I am familiar with the subdivision and have driven over its streets. I am sure all counsel can agree on this fact. The question has not been raised by either party, I suspect because all of the parties have accepted this statement as a fact, however, the record must include this very important evidence.

Therefore, I request that counsel either file a written stipulation regarding the status of the remaining streets or I will grant the Complainants an ore tenus hearing for the purpose of proving the fact.

Exception No. 5

The Court sustains the exception. The Court finds that there is clear and convincing evidence that a way of necessity exists. Three witnesses testified that there was no access to a public way and that the land of the Complainants was landlocked. As a matter of fact, there is no evidence to the contrary. It isn't disputed that in the title from Jeremiah Watkins no way was provided from the land of the Complainants for ingress and egress to a public way. All the elements are present in this case which are required in order to establish a way by necessity. Access from landlocked property is not determiend by the fact that there may be some possible physical means of ingress and egress to and from the property. The access, by way of necessity, to which the landowner is entitled, is a legal right of way of ingress and egress over the land of another. The Complainants in this case have absolutely no legal right to pass over the property of any of the other adjoining property owners. All of the evidence indicates that there is no access and that the land is landlocked. Admittedly, it would be lawful for the Court to grant that right over some other part of the Holloway Forrest Subdivision, but in this equity case, the only logical and fair access should be over that part of the property which was, in fact, reserved for access.

The Court sustains the objections noted on page 9 and page 73 of the Transcript. Mr. Smith made another objection which I would suggest is now moot. The order should reflect the Court's rulings on these matters.

I thank you gentlemen for your assistance in this matter and would request that Mr. Smith prepare the order.

Yours very truly,

G. Duane Holloway
Judge

GDH/ct

VIRGINIA: 193

IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et als, Complainants

v. Chancery No. 6286

JOSEPH E. HURD, et als, Respondents

ORDER WITHDRAWING DEMURRER

This day came the Respondents, PETER H. CARR and PEGGY L. CARR, by counsel, to respectfully request the Court to permit them to withdraw their Demurrer heretofore filed on February 6, 1985.

UPON CONSIDERATION WHEREOF, it is ORDERED that the Respondents, PETER H. CARR and PEGGY L. CARR, are hereby permitted to withdraw their Demurrer filed February 6, 1985.

And this cause is continued for further order.

ENTER this 14 day of June, 1987.

JUDGE

I ASK THIS:

p.d.

STEPHEN D. HARRIS
McGuire, Woods, Battle & Boothe
Post Office Box 379
Williamsburg, Virginia 23187

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Chancery Order 35 193

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,

Plaintiffs,

vs. Chancery No. 6286

JOSEPH E. HURD, et al,

Defendants.

O R D E R

THIS CAUSE came to be heard upon the Bill of Complaint; the Amended Bill of Complaint; the Answers and Amended Answer of the Defendants, JOSEPH E. HURD and ANNETTE HURD; the Demurrer of PERCY SMITH and EDYTHE SMITH; the Demurrer and Answer of PETER H. CARR and PEGGY L. CARR; the Depositions of ROBERT J. WATKINS, PERCY SMITH, ROGER D. SPEARMAN, JOHN H. DRESSLER and GEORGE DICKERSON heretofore taken and filed herein in accordance with law; the report of the Commissioner in Chancery with Exhibits and Depositions thereto attached; the Exceptions to Commissioner's Report filed herein by the Plaintiffs; the Stipulation of Counsel upon Defendants' HURD Notice and Motion to Confirm the Commissioner's Report; and was argued by counsel.

WHEREUPON, having fully considered all the facts, evidence, circumstances, memoranda of law and arguments of counsel, the Court finds the following:

1. The Demurrer of PERCY SMITH and EDYTHE SMITH was withdrawn by counsel at the Commissioner's hearing and by Order of this Court entered on September 16, 1986, the Bill of

Complaint was amended to make PERCY SMITH and EDYTHE SMITH, defendants as Trustees in dissolution of EDBAR ESTATES, INC., a dissolved Virginia corporation and not as individuals.

2. The Demurrer of PETER H. CARR and PEGGY L. CARR has been withdrawn.

3. Plaintiffs' Exceptions Nos. 1 - 5 to the Report of the Commissioner in Chancery should be and therefore are sustained as set out in the written opinion of the Court dated June 16, 1987 heretofore provided counsel.

4. The parcel of land which is the subject of this suit and marked "Reserved" was dedicated to the Town of Poquoson as a public right-of-way or street and accepted by said Town of Poquoson in accordance with §26-34 of its Code when it approved the subdivision plat of "Holloway Forrest" subdivision for recordation. Such recordation transferred the fee simple title to the "Reserved" parcel to the Town of Poquoson pursuant to §15.1-478 of the Code of Virginia for use as a public right-of-way or street.

5. The portion of the subdivision plat of "Holloway Forrest" which encompassed the "Reserved" parcel was never legally vacated in accordance with §15.1-482 and remains available for public use.

6. The title to the "Reserved" parcel, being a dedicated public way, could not be transferred by Defendants PERCY SMITH and EDYTHE SMITH, Trustees to Defendants JOSEPH E. HURD and

ANNETTE HURD and the deed dated April 20, 1983 and recorded in the Clerk's Office of this Court in Deed Book 377, page 331 is void.

7. Defendants HURD, having no title to any of the "Reserved" parcel, could not transfer any portion of such property to Defendants PETER H. CARR and PEGGY L. CARR and the deed dated October 10, 1983 and recorded in Deed Book 390, page 523 is void.

8. The plat of survey dated March 14, 1983 by ROGER D. SPEARMAN, Land Surveyor, entitled "Boundary Line Adjustment Between the Properties Standing in the Name of Joseph E. Hurd & Annette Hurd Being Lot 31 & Peter H. Carr & Peggy L. Carr Being Lot 32 in Holloway Forrest" recorded in Plat Book 9, page 623 and approved by the City of Poquoson is void and the adjustment of the boundary lines between Lots 31 and 32 are invalid.

9. The Plaintiffs, as adjoining property owners without any other access to their property, are entitled to the use of the "Reserved" parcel with the public at large for purposes of ingress and egress to and from their property and as required by §26-34 of the Town of Poquoson Code in effect at the time the "Reserved" parcel was created.

10. The Plaintiffs are clearly entitled to a way of necessity to their property from a public street and the logical and fair access is over the parcel marked "Reserved" which is the subject of this suit. The Court further finds that the width of

a way of necessity in this case should be and is twelve feet (12').

WHEREUPON, the Court hereby Orders and Decrees as follows:

1. Plaintiffs' Exceptions Nos. 1 - 5 to the Commissioner in Chancery's report be and hereby are sustained.

2. Counsel's objections noted on page 9 and page 73 of the Transcript of the Commissioner's Hearing are sustained.

3. The deed dated April 20, 1983 from PERCY SMITH and EDYTHE SMITH, Trustees to JOSEPH E. HURD and ANNETTE HURD, recorded in the Clerk's Office of this Court in Deed Book 377, page 331 be and the same hereby is declared void and the Clerk is directed to note such action on the margin of the deed book.

4. The deed dated October 10, 1983 from JOSEPH E. HURD and ANNETTE HURD recorded in the Clerk's Office of this Court in Deed Book 390, page 523 be and the same hereby is declared void and the Clerk is directed to note such action on the margin of the deed book.

5. The plat dated June 30, 1983 by Spearman & Associates, Inc. entitled "Boundary Line Adjustment Between The Properties Standing in the Name of Joseph E. Hurd & Annette Hurd Being Lot 31 and Peter H. Carr & Peggy L. Carr being Lot 32 in Holloway Forrest" recorded in the Clerk's Office of this Court in Plat Book 9, page 623 be and the same hereby is declared void and the Clerk is directed to make the appropriate notation on the records.

6. The parcel of land marked "Reserved" which is the subject matter of this suit be and the same hereby is declared a legally dedicated street available for use by the plaintiffs and the public as such.

7. The Plaintiffs are hereby granted a way of necessity twelve feet (12') in width located in the center of the "Reserved" parcel, which said way is subject to the rights of the public in and to the "Reserved" parcel.

8. The Commissioner in Chancery, ROBERT F. RIPLEY, JR., is hereby awarded the sum of $ ~~2350~~ 00 , as a reasonable fee for his services to the Court in this cause. 10/24/1880

9. The costs incurred in this proceeding, including the Commissioner's fee shall be equally divided among all the parties hereto.

And nothing further to be done in this cause, the Clerk is ordered to remove it from the docket.

ENTER: 10/27/87

JUDGE

I ask for this:

James H. Smith, Counsel for Plaintiffs

Seen: and objected to

Counsel for Joseph E. Hurd and Annette Hurd

Seen and objected to:

Counsel for Percy Smith and
Edythe Smith, Trustees

Seen and objected to:
Stephen D. Harris 9/17/87

Counsel for Peter H. Carr and
Peggy L. Carr

Seen & objected to:
Benjamin M. Hobbs

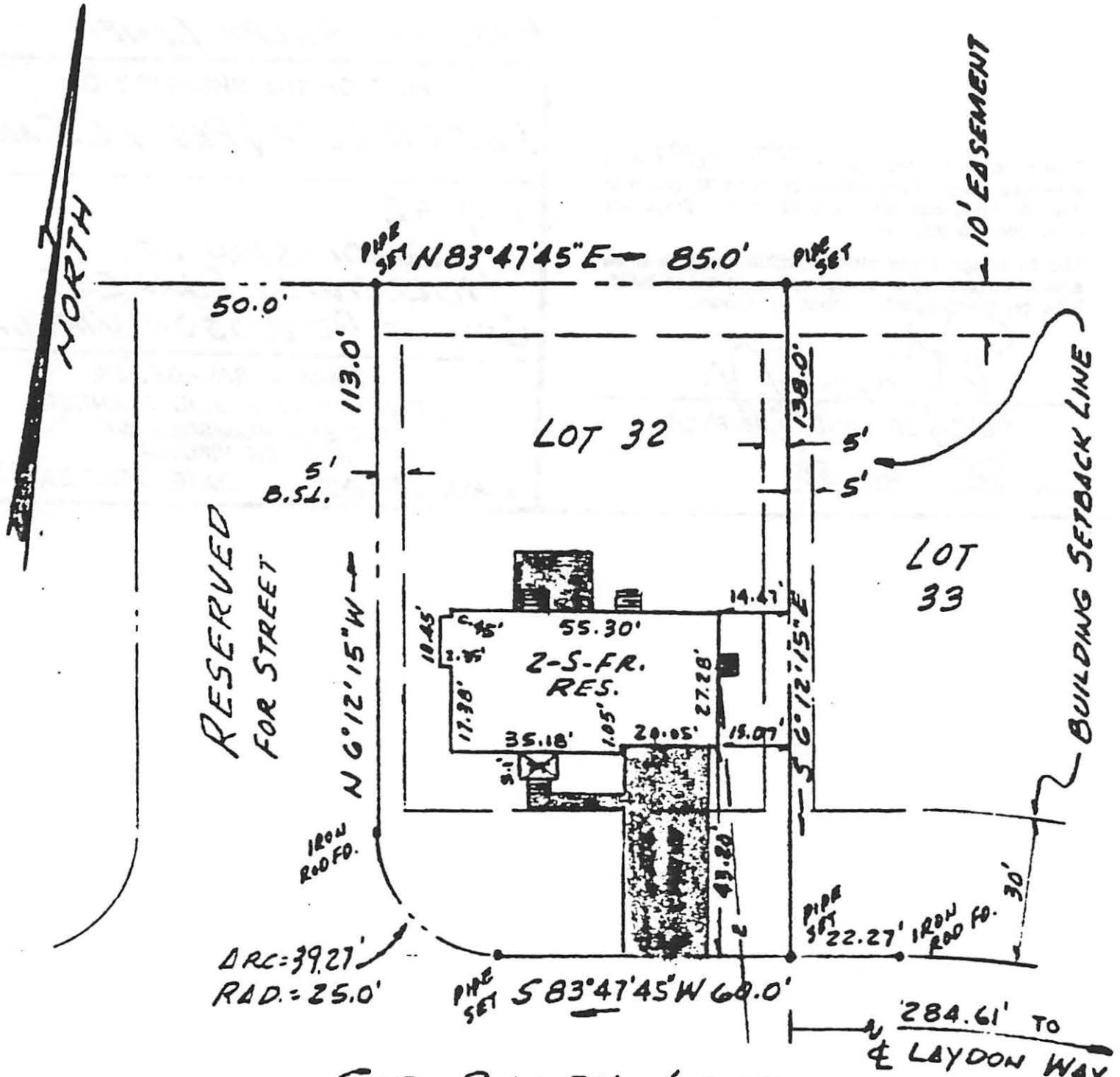
Counsel for the City of
Poquoson, Virginia

ASSIGNMENTS OF ERROR

The trial court erred in sustaining the exceptions to the Report of the Commissioner in Chancery (Exceptions one through five) because:

1. There was never a statutory dedication or common law dedication, to the City of Poquoson of the subject "Reserved" parcel.

2. The plaintiffs in the trial court, appellees herein, did not meet their burden of proof in establishing their right to an easement by necessity.



PLAT REF: PLAT BOOK 7, PAGE 119

Carr Exh. No. 1

#101 SIR RALPH LANE

PLAT OF THE PROPERTY OF

PETER H. CARR & PEGGY L. CARR

LOT 32

SUBDIVISION OF

HOLLOWAY FORREST

CITY OF POQUOSON, VIRGINIA

This is to certify that on SEPT. 30, 1976 I surveyed the property shown on this plat, and that the title lines and the walls of the buildings are as shown on this plat.

The buildings stand strictly within the title lines and there are no encroachments of other buildings on the property except as shown.

CERTIFIED LAND SURVEYOR

F.B. 78 PG. 58

THOMAS J. SAVAGE, JR.
SURVEYOR AND LAND PLANNER
1900 EAST PEMBROKE AVE.
HAMPTON, VIRGINIA

SCALE: 1" = 30' DATE: SEPT. 30, 1976

THIS DEED, made this 15th day of Nov., 1976, by and between R. A. STAPLES CONTRACTING CO., party of the first part, and PETER H. CARR and PEGGY L. CARR, husband and wife, parties of the second part.

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid, and other good and valuable consideration, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY and with ENGLISH COVENANTS OF TITLE, unto the said PETER H.CARR and PEGGY L. CARR, husband and wife, parties of the second part, jointly as tenants by the entirety with the right of survivorship as at common law, the following described property, to-wit:

> All that certain lot, piece or parcel of land, situate lying and being in the City of Poquoson (formerly Town of Poquoson, County of York), Virginia, known and designated as Lot Numbered Thirty-two (32) as shown on that certain plat entitled, "Subdivision of Holloway Forrest", made by Baldwin & Gregg, Certified Engineers of Norfolk, Virginia, and of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat book 7, page 119, to which reference is here made.
>
> Subject, however, to the restrictions, easements and rights of way of record affecting said property.
>
> Together with all and singular the buildings and improvements thereon, rights and privileges, tenements, hereditaments, easements, and appurtenances unto the said land belonging or in anywise appertaining.
>
> It being the same property conveyed unto the party of the first part by deed of Edbar Estates Corp. dated August 19, 1975 and of record in the Clerk's Office aforesaid and recorded in Deed Book 279, page 605.

ORNEYS AND COUNSELLORS AT LAW :- 133 KING'S WAY :- P.O. BOX 432 :- HAMPTON, VIRGINIA 23669

Cannavino and Knight ATT

IN WITNESS WHEREOF, R. A. Staples Contracting Company has caused its corporate name to be hereunto subscribed by its President and its duly attested corporate seal to be hereunto affixed by its Secretary, both of said officers being duly authorized therefor.

R. A. STAPLES CONTRACTING CO.

By: Ronald A. Staples (SEAL)
President

ATTESTED:

Bruce M. Staples

STATE OF VIRGINIA,

CITY OF HAMPTON, to-wit:

I, JAMES A. McQUOID, a Notary Public in and for the City and State aforesaid, do hereby certify that RONALD A. STAPLES and RUTH W. STAPLES, President and Secretary, respectively, of R. A. Staples Contracti Company, whose names are signed to the foregoing Deed dated Nov. 15, 1976, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 16 day of NOVEMBER, 1976.

My commission expires: OCT. 14, 1979

James A McQuoid
Notary Public

VIRGINIA: County of York to-wit:

In the Clerk's Office of the Circuit Court for the County of York, the 16th day of November, 1976
This deed was presented with the certificate annexed and admitted to record at 2:40 o'clock P.M.
The taxes imposed by Sect. 58-51, (a) and (b) of the code have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
$ 91.50	$ 30.50	$ 61.00

Teste: Edith M. Elliott, Clerk
By: _____ Deputy Clerk

and Knight ATTORNEYS AND COUNSELLORS AT LAW -:- 133 KING'S WAY -:- P.O. BOX 432 -:- HAMPTON, VIRGINIA 23669

JONES, BLECHMAN, WOLTZ & KELLY, P.C.
ATTORNEYS AND COUNSELORS AT LAW
2600 WASHINGTON AVENUE
FIRST & MERCHANTS NATIONAL BANK BUILDING
POST OFFICE BOX 78
NEWPORT NEWS, VIRGINIA 23607

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
F. O. BLECHMAN
HERBERT V. KELLY
RAYMOND H. SUTTLE
HARRY J. KOSTEL
JOHN T. TOMPKINS, III
EDWARD DWIGHT DAVID
CONWAY H. SHEILD, III
HERBERT V. KELLY, JR.

OF COUNSEL
ARTHUR W. WOLTZ

RICHARD B. DONALDSON, JR.
MERYL D. MOORE
MARLA J. MELMAN
ROBERT L. FREEMAN, JR

TELEPHONE 245-2861
AREA CODE 804

OUR FILE NO.

January 27, 1984

Colonel J. E. Hurd
5 Sir Ralph Lane
Poquoson, VA 23662

Dear Col. Hurd:

Enclosed herewith is the originally recorded boundary line agreement, along with the three plats you requested.

I enclose my bill for services rendered and costs advanced in this regard.

Very truly yours,

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

BY: _____
CONWAY H. SHEILD, III

CHS, III/sdp
Enclosure

BOOK [illegible]

THIS BOUNDARY LINE AGREEMENT, made this 10th day of October, 1983, by and between JOSEPH E. HURD AND ANNETTE HURD, husband and wife, parties of the first part; and PETER H. CARR AND PEGGY L. CARR, husband and wife, parties of the second part;

WHEREAS, by deed dated August 31, 1981, Antonia Ulisse and Betty Jean W. Ulisse, husband and wife, conveyed Lot 31, "Subdivision of Holloway Forrest", unto Joseph E. Hurd and Annette Hurd, husband and wife, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 356, page 411; and

WHEREAS, by deed dated April 20, 1983, Percy Smith and Edythe Smith, Trustees in dissolution of Edbar Estates Corporation, conveyed a 50' right-of-way to Joseph E. Hurd and Annette Hurd, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 377, page 311; and

WHEREAS, by deed dated November 16, 1976, R. A. Staples Contracting Company conveyed Lot 32, "Subdivision of Holloway Forrest", unto Peter H. Carr and Peggy L. Carr, husband and wife, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 294, pages 345 and 346; and

WHEREAS, the parties hereto desire to adjust the boundary line of their respective properties.

NOW, THEREFORE, it is agreed by and between the parties hereto that the division line between the property of Joseph E. Hurd and Annette Hurd, husband and wife and Peter H. Carr and Peggy L. Carr, husband and wife, shall be as shown on plat of survey prepared by Spearman & Associates, Inc. - Land Surveyors, dated June 30, 1983, entitled, "BOUNDARY LINE ADJUSTMENT BETWEEN THE PROPERTIES STANDING IN THE NAME OF JOSEPH E. HURD & ANNETTE HURD BEING LOT 31 & PETER H. CARR & PEGGY L. CARR BEING LOT 32 IN HOLLOWAY FORREST LOCATED CITY OF POQUOSON, VIRGINIA," which plat is hereto attached and made a part hereof, and is to be recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book 9, page 623.

177

LAW OFFICES
JONES
BLECHMAN
WOLTZ & KELLY, P. C.
2600 Washington Avenue
Newport News, Va.

WITNESS the following signatures and seals, the day and year first above written.

Joseph E. Hurd (SEAL)
JOSEPH E. HURD

Annette Hurd (SEAL)
ANNETTE HURD

Peter H. Carr (SEAL)
PETER H. CARR

Peggy L. Carr (SEAL)
PEGGY L. CARR

STATE OF VIRGINIA

City/County of _____, to wit:

The foregoing instrument was acknowledged before me this ___ day of October, 1983, by Joseph E. Hurd and Annette Hurd, husband and wife.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:

_____

STATE OF ~~VIRGINIA~~ Alabama

City/County of Dale, to wit:

The foregoing instrument was acknowledged before me this 7th day of ~~October~~ December, 1983, by Peter H. Carr and Peggy L. Carr, husband and wife.

Laura P. Williams
NOTARY PUBLIC

MY COMMISSION EXPIRES:

12/November/1984

VIRGINIA: County of York, to-wit:

In the Clerk's Office of the Circuit Court for the County of York, the 5th day of January, 1984 This deed was presented with the certificate annexed and admitted to record at 10:35 o'clock AM.

Teste: Edith M. Elliott, Clerk

By: _____ Deputy Clerk

LAW OFFICES
JONES
BLECHMAN
WOLTZ & KELLY, P. C.
2600 Washington Avenue
Newport News, Va.

JONES, BLECHMAN, WOLTZ & KELLY, P.C.
ATTORNEYS AND COUNSELORS AT LAW
9600 WASHINGTON AVENUE
FIRST & MERCHANTS NATIONAL BANK BUILDING
POST OFFICE BOX 28
NEWPORT NEWS, VIRGINIA 23607

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
LEO BLECHMAN
HERBERT V. KELLY
RAYMOND H. SUTTLE
HARRY L. KOSTEL
JOHN T. TOMPKINS III
EDWARD DWIGHT DAVID
CONWAY H. SHIELD, III
HERBERT V. KELLY, JR.

OF COUNSEL
ARTHUR W. WOLTZ

RICHARD B. DONALDSON, II
MERYL D. MOORE
MARLA J. MELMAN
ROBERT L. FREEMAN, JR.

TELEPHONE 245-2864
AREA CODE 804

OUR FILE NO.

October 14, 1985

Mr. Joseph E. Hurd
5 Sir Ralph Lane
Poquoson, VA 23662

Dear Mr. Hurd:

Enclosed herewith is the Boundary Line Agreement you asked me to prepare. This requires the signature of your and your wife, as well as Mr. and Mrs. Carr. All signatures should be properly acknowledged by a notary public.

Once all signatures are in place, please forward this original document back to me for recordation. I have retained the plat, which is referred to in this document, and will record that simultaneously with the agreement.

If you have any questions, please call me.

Very truly yours,

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

BY:
CONWAY H. SHIELD, III

CHS,III/sdp
Enclosure

THIS BOUNDARY LINE AGREEMENT, made this day of October, 1985, by and between JOSEPH E. HURD AND ANNETTE HURD, husband and wife, parties of the first part; and PETER H. CARR AND PEGGY L. CARR, husband and wife, parties of the second part;

WHEREAS, by deed dated August 31, 1981, Antonia DiSisse and Betty Jean W. DiSisse, husband and wife, conveyed Lot 31, "Subdivision of Holloway Forrest", unto Joseph E. Hurd and Annette Hurd, husband and wife, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 336, page 111; and

WHEREAS, by deed dated April 30, 1985, Percy Smith and Edythe Smith, Trustees in dissolution of Edbar Estates Corporation, conveyed a 50' right-of way to Joseph E. Hurd and Annette Hurd, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 377, page 311; and

WHEREAS, by deed dated November 16, 1976, R. A. Staples Contracting Company conveyed Lot 32, "Subdivision of Holloway Forrest", unto Peter H. Carr and Peggy L. Carr, husband and wife, of record in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Deed Book 291, pages 515 and 516; and

WHEREAS, the parties hereto desire to adjust the boundary line of their respective properties.

NOW, THEREFORE, it is agreed by and between the parties hereto that the division line between the property of Joseph E. Hurd and Annette Hurd husband and wife and Peter H. Carr and Peggy L. Carr, husband and wife, shall be as shown on plat of survey prepared by Spearman & Associates, Inc. Land Surveyors, dated June 30, 1985, entitled, "PLAT SHOWING LINE ADJUSTMENT BETWEEN PROPERTIES STANDING IN THE NAME OF JOSEPH E. HURD & ANNETTE HURD BEING LOT 31 & PETER H. CARR & PEGGY L. CARR BEING LOT 32 IN HOLLOWAY FORREST LOCATED CITY OF POQUOSON, VIRGINIA," which plat is hereto attached and made a part hereof, and is to be recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, in Plat Book , page

LAW OFFICES
JONES
BLECHMAN
WOLTZ & KELLY, P.C.
888 Washington Avenue
Newport News, Va.

WITNESS the following signatures and seals, the day and year first above written.

JOSEPH E. HURD (SEAL)

ANNETTE HURD (SEAL)

PETER H. CARR (SEAL)

PEGGY L. CARR (SEAL)

STATE OF VIRGINIA

City/County of , to wit:

The foregoing instrument was acknowledged before me this day of October, 1985, by Joseph E. Hurd and Annette Hurd, husband and wife.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

STATE OF ~~VIRGINIA~~ Alabama

City/County of Mobile, to wit:

The foregoing instrument was acknowledged before me this 7th day of ~~October~~ December, 1985, by Peter H. Carr and Peggy L. Carr, husband and wife.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

31 November 1986

LAW OFFICES
IES
ICHMAN
ORTZ & KELLY, P. C.
0 Washington Avenue
Newport News, Va

LT. COL. JOSEPH E. HURD
5 SIR RALPH LANE
POQUOSON, VA 23662

24 Apr 83

Dear Pete

The purchase of the driveway L.T. is complete. I am happy to say I Hope I never hear from Mr. Smith Again. This letter acknowledges receipt of Two Thousands ($2,000.00) for payment of part of said driveway L.T. placement of property Line + final price to be determine when you arrive at Poquoson.

Joseph E Hurd

Annette Hurd
Annette Hurd

As I told you on the Phone Pete, we plan to be in town last of May / 1st of June. If you have time give me a call Autovon + I will make sure.

Thanks for your help

Joe

HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5896

LT. COL. JOSEPH E. HURD
5 SIR RALPH LANE
POQUOSON, VA 23662

5 FEB 83

DEAR PETE

IT HAS BEEN A LONG TIME COMING, BUT I BELIEVE WE HAVE FINALLY GOT ALL THE PAPER WORK COMPLETE ON THE LOT. THE FOLLOWING IS THE WAY I UNDERSTAND ALL THE DETAILS.

A. LOT SIZE (SEE PLAT)

	CARK	HURD
NEW LOT	13272.4250 SQ FT	19068.4250 SQ FT
OLD LOT	11551.6250	13621.6250
INCREASE	1,720.8000	5,446.8000

THE ORIGINAL SURVEY FOR THE RESERVE STRIP WAS 7168.± OUR INCREASE CAME OUT

1720.8
5446.8
7167.6 SQ FT

B. PRICE

I PURCHASED THE LOT FOR $10,000 (SEE ATCH 1) FROM PERCY SMITH. I WILL PAY ALL THE CLOSING.

C. COST PER SQ FT.

$10,000.00 ÷ 7167.6 SQ FT = $1.40 PER SQ-FT.

HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5896

LT. COL. JOSEPH E. HURD
5 SIR RALPH LANE
POQUOSON, VA 23662

D Cost of your share of the Lot

		Total
Land	1,720.8000 sq FT	
	x $1.40 per sq FT	
	$2409.12	2409.12
Land survey (Atch 2)		
	$260.00 ÷ 2 =	130.00
Closing costs (Atch 3)		
	Lawyer fee 50.00	
	Recording 20.00	
	70.00 ÷ 2	35.00
		$2,574.12
Less your down payment		- 2000.00
NET DUE		$574.12

I have provided a copy of the plat to the City of Poquoson. Your next taxes should reflect the increase in your lot size.

HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5896

LT. COL. JOSEPH E. HURD
5 SIR RALPH LANE
POQUOSON, VA 23662

Hopefully you can understand this. If not give me a call at AV 223-~~8245~~ 8246.

I don't have an assignment yet, but hope to get some word by April. We are going to put our house on the market next weekend.

Hope to see you before we leave (miss summer)

Thanks

Joe

185 HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5896

R-9

PURCHASERS' STATEMENT

TO: Joseph E. Hurd, et ux
Parcel on Sir Ralph Lane
Poquoson, VA

Purchase Price		$10,000.00
5 per cent commission to Percy Smith		500.00
Ralph Goldstein, preparation of deed		35.00
Conway H. Sheild, III, legal services		100.00
Recording deed		33.00
LESS:		
Deposit	100.00	
Pro-rata taxes (1/1/83 to 4/22/83)	10.56	
NET DUE HEREWITH	10,557.44	
TOTAL	$10,668.00	$10,668.00

April 22, 1983

Conway H. Sheild, III, Esq.
Jones, Blechman, Woltz & Kelly, P.C.
2600 Washington Avenue, Suite 700
Newport News, Virginia

LAW OFFICES
IES
ECHMAN
OLTZ & KELLY, P. C.
0 Washington Avenue
lewport News, Va.

ATCH 1

ARMAN & ASSOC INC.

LAND SURVEYING & PLANNING

706 Richmond Road
Williamsburg, Virginia 23185
[804] 229-3069

INVOICE

Date: June 30, 1983

Job Order No.: 1579

Terms:
Due on Presentation

Lt. Col. Joseph E. Hurd
5 Sir Ralph Lane
Poquoson, VA 23662

RE: Lots 31 & 32 & 50' Reserved Strip Holloway Forest, Poquoson	
ITEM: 1) Computing, Plotting, Drafting: 7 hrs. @ $20.00 per hr.	$ 140.00
2) Mylar for Recording	10.00
3) 3-man Survey Party: 2 hrs. @ $55.00 per hr.	110.00
TOTAL NOW DUE	$ 260.00

Pd 12 Sept 83

Note: 1½% interest per month on unpaid balance after 30 days

Atch 2

REMITTANCE COPY

Atch 3

B. Atch 2) Lot 1-A ... From Lot ... C. ... 4. 40 per ...

187

HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5898

Jones, Blechman, Woltz & Kelly, P.C.

Attorneys and Counselors at Law

2600 Washington Avenue First & Merchants National Bank Building Post Office Box 78 Newport News, Virginia 23607 (804) 245-2861

INVOICE # 92,044

Colonel J. E. Hurd
5 Sir Ralph Lane
Poquoson, VA 23662

January 30, 1984

File No. 40377/10001(11)

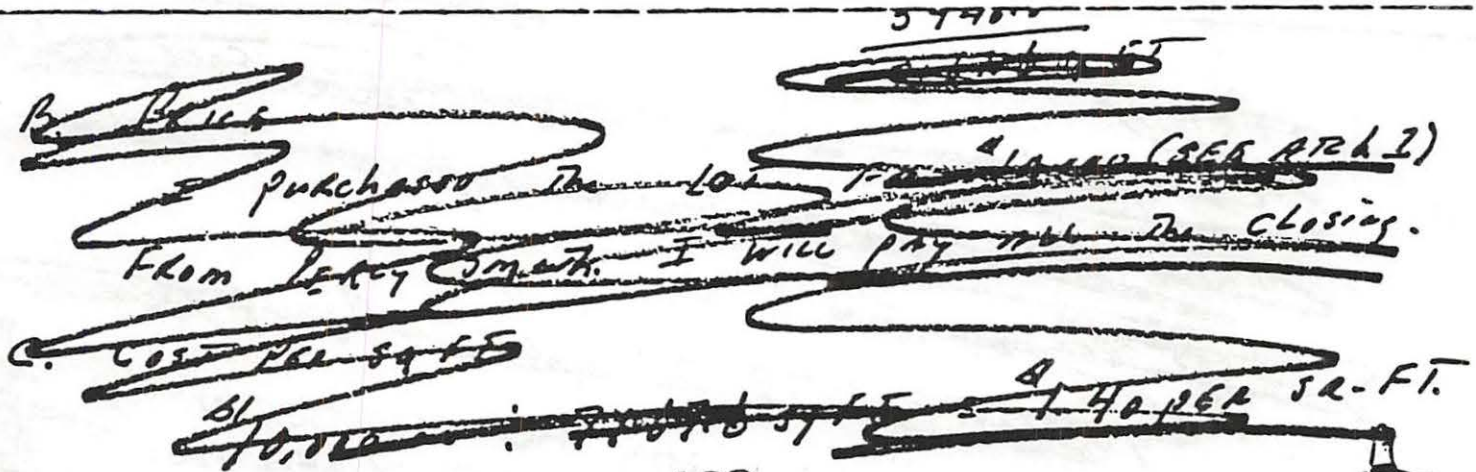
For Professional Services Rendered

FOR:	SERVICES RENDERED	
	Preparation and recording of boundary line agreement	$50.00
FOR:	COSTS ADVANCED	
	Recording Cost of agreement and plat	20.00
		$70.00

Pd 6 FEB 84

REMITTANCE COPY

Atch

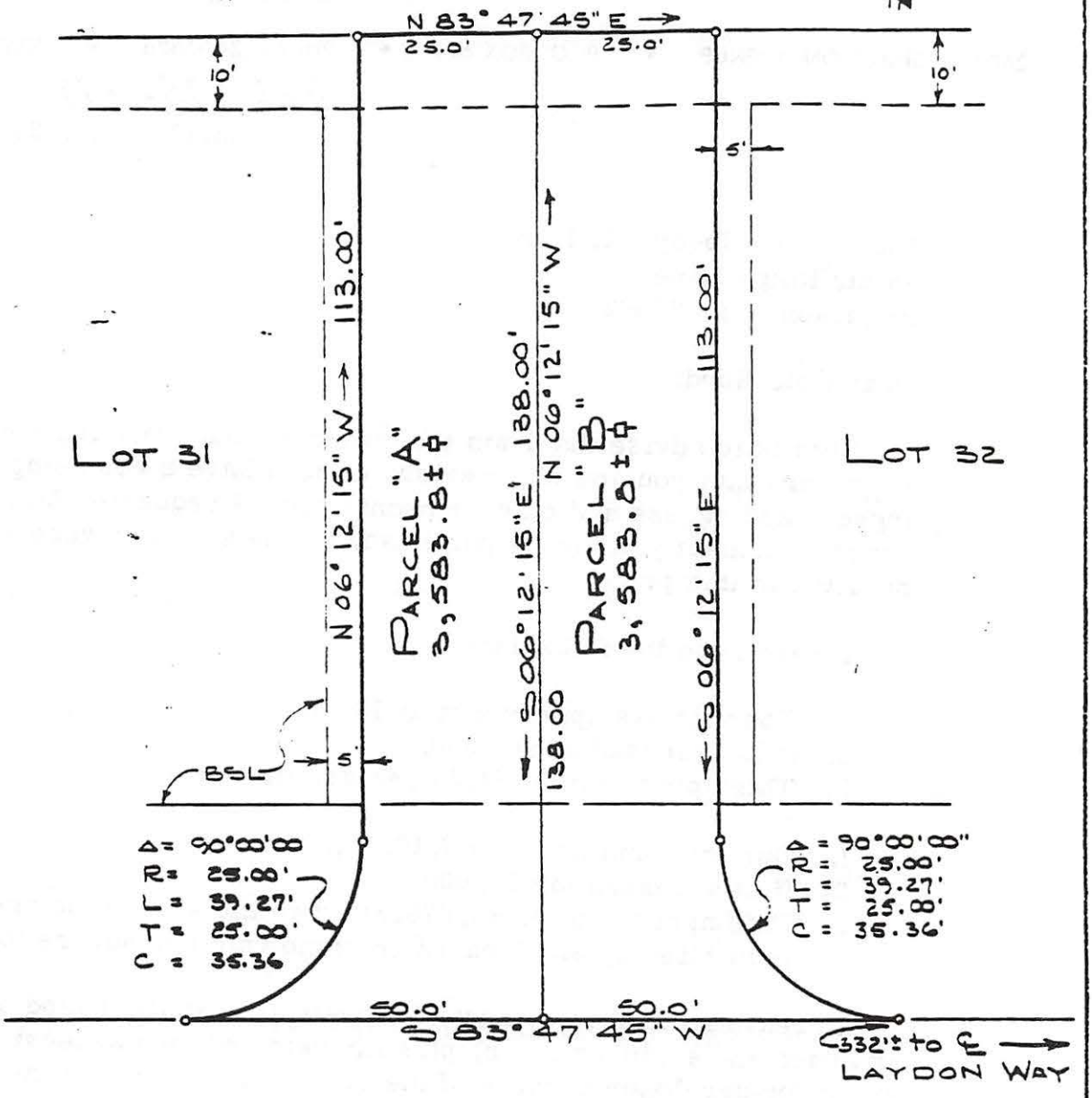


188 HQ TAC/DOOOW
LANGLEY AFB, VA
AUTOVON 432-5896

CERTIFICATE OF APPROVAL:

THIS PLAT IS APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH EXISTING SUBDIVISION REGULATIONS AND MAY BE COMMITTED TO RECORD.

SIGNED: _____ DATE: _____
AGENT OF GOVERNING BODY



SIR RALPH LANE
50' R/W

Hurd Exh. No. 1

COMMONWEALTH OF VIRGINIA
ROGER L. SPEARMAN
CERTIFICATE No. 1264
CERTIFIED LAND SURVEYOR

References:
PB7, P. 119

IPF = Iron Pipe Fd.
IPS = Iron Pipe Set
BSL = Building Set-back Line

Date: June 25, 1981
Scale: 1" = 20'
J.O. 1202 PB "E"

PLAT OF PROPERTY
STANDING IN THE NAME OF
EDBAR ESTATES CORPORATION
BEING
PART OF HOLLOWAY FORREST
LOCATED
189 POQUOSON, VIRGINIA

Spearman & Associates, Inc., Land Surveying
706 Richmond Road Williamsburg, Virginia
804 — 229-3069

Percy Smith, Incorporated

Realtor
Insuror
Developer

2600 WASHINGTON AVENUE • P. O. BOX 694 • PHONE 247-5826 • NEWPORT NEWS, VA. 23607

Hank 595-0379

March 23d, 1983

Lieut. Col. Joseph E. Hurd
#5 Sir Ralph Lane
Poquoson, Va. 23662

Dear Col. Hurd:

This is to advise that I am the owner of land adjoining your home. It appears that you and the previous owners have been using this land for ingress and egress and other personal use. I requested Mr. William Sears to contact you for its purchase, but he said you were strongly negative to this price.

Please note the following:

1. Your lot has approximately 13,000 sq. ft. + or -.
2. It is assessed at $17,000.
3. This approximates $1.35 per sq. ft. + or -.

1. Our lot contains about 7,168 sq. ft. + or -.
2. It is assessed for $5,000.
3. This approximates $9,676.80 when the square footage of 7,168 is multiplied by $1.35 based on same rate per square foot.

In real estate development, lot costs are usually based on raw land plus utilities and engineer costs, plus interest and then at least doubled to obtain profit for developer because of the speculative nature of the project.

In today's market, hardly any improved lot can be created for less than seven to ten thousand plus raw land cost. Double or triple this and you arrive at market value for improved lots.

Owing to the unusual circumstances of your house location and its apparent need for the adjoining lot, this establishes a value far in excess of ordinary land value. This appears to be true because you are and have been using it only because you find it necessary. Of course, if you do not need it, and find it no longer necessary to use it, then it has no value to you.

Hurd EX #2 8/15/86 RP

Percy Smith, Incorporated

Realtor
Insuror
Developer

2600 WASHINGTON AVENUE • P. O. BOX 694 • PHONE 247-5826 • NEWPORT NEWS, VA. 23607

We call to your attention on the enclosed survey that area colored in red which shows the frontage of the parcel along the front and side of your house.

If as aforesaid, you feel this lot does not fit in your program, you are requested to discontinue its use, and to remove any of your personal improvements located thereon. Within ten days we will instruct our engineer to put the necessary stakes and markings thereon for our benefit.

There is also an alternate route we can take. We are holding it in abeyance at this time. If you and your neighbor desire to purchase this land, the price is $15,000. plus 5% commission to the agent. This offer is good for ten (10) days from date.

Very truly yours,

Percy Smith

PERCY SMITH

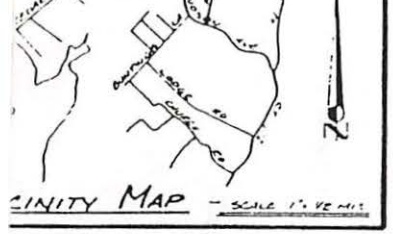
PS:en

Enclosure: 1

SMITH TRUSTEE EXHIBIT NO. 1 -

PLAT, TOO LARGE TO BE REASONALBY REPRODUCED;

LOCATED IN CLERK'S OFFICE.



ADJUSTMENT OF BOUNDARY LINES
H THE FREE CONSENT AND IN AC-
NCE WITH THE WISHES AND DESIRES
DERSIGNED OWNERS AND PROPRIETORS.

[signature] DATE 29 July 1983
[signature] DATE 29 July 1983
[signature] DATE 29 July 1983
[signature] DATE 29 July 1983

AURA P. WILLIAMS, A NOTARY
IN AND FOR THE STATE OF
BAMA DO HEREBY CERTIFY THAT
ERSONS WHOSE NAMES ARE SIGNED
E WRITINGS ABOVE HAVE ACKNOW-
D THE SAME BEFORE ME IN MY
ICE AFORESAID 29th
EN UNDER MY HAND THIS ____ DAY OF
July, 1983.
[signature]
MMISSION EXPIRES 12/[illegible] 1986

393

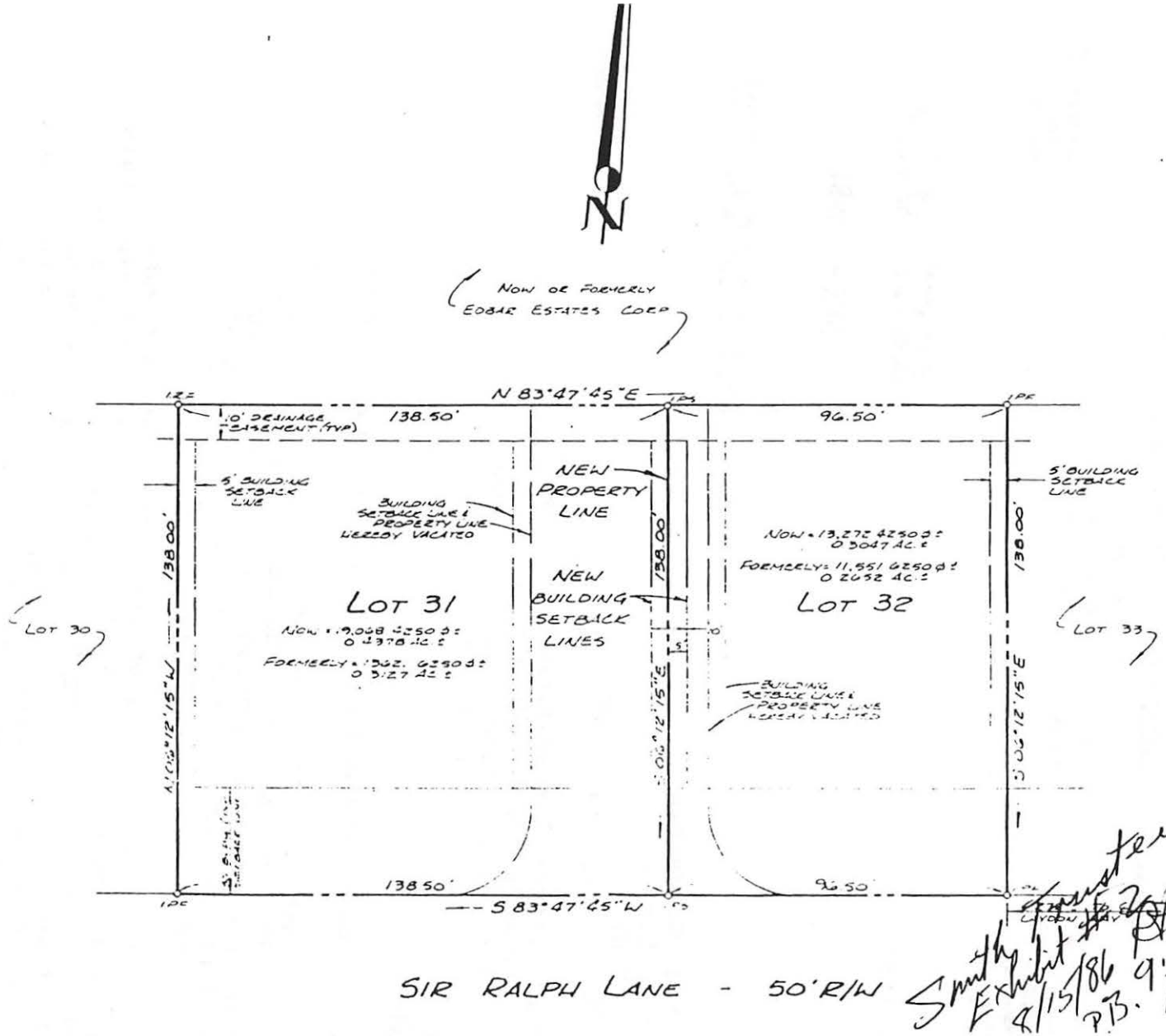
VEYORS CERTIFICATE:

THE BEST OF MY KNOWLEDGE AND
F ALL THE REQUIREMENTS AS SET
N IN THE SUBDIVISION ORDINANCE
TY OF ROCKINGHAM, VIRGINIA HAVE

PETE

SCALE

SPEAR



Smith Counties
Exhibit #
4/15/86
P.B. 9, P. 123

MASON, GIBSON, COWARDIN AND SPENCER
ATTORNEYS AT LAW
693 J. CLYDE MORRIS BOULEVARD
NEWPORT NEWS, VIRGINIA 23601

SHANNON T. MASON, JR.
JONATHAN S. GIBSON, III
WILLIAM C. COWARDIN, JR.
WAYNE R. SPENCER
ALLEN C. TANNER, JR.

AREA CODE
(804)
595-7275

April 2, 1981

RECEIVED
APR - 7 1981
GOLDSTEIN & MUROV

Mr. Ralph M. Goldstein
Attorney at Law
P. O. Box 2201
Newport News, Virginia 23602

Re: Edbar Estates Corporation/Percy Smith
Area shown as reserved on plat of
Holloway Forrest Subdivision, between
Lots 31 and 32, off of Sir Ralph Lane

Dear Ralph:

I have examined the plat of Holloway Forrest.

I make reference to Sec. 15.1-478 of the Code of Virginia, 1950, as amended. The last sentence in the first paragraph of that section reads, "but nothing contained in this article shall effect any right of a subdivider of land heretofore validly reserved."

It would appear from the history of this subdivision that the developer validly reserved unto himself this portion of land. I would point out that this is not a lot and cannot be built upon. The portion of land referred to does not meet any standards under the zoning or subdivision ordinance which would permit construction upon the same. However, the developer could sell a portion of this land or all of the same to the owners of Lots 31 or 32. I would imagine he could sell it to anyone else, but nothing could be constructed upon the same.

Mr. Smith is also liable for taxes on this portion of property for a period extending back at least 10 years. I am sending a copy of this letter to the Commissioner of Revenue and the City Manager so they may have reference to the same.

Smith Trustee Exh. No. 3

I would suggest that any conveyance of this piece of property be done by re-plat, with the City Manager signing such plat in order that the question of title can be clarified for future reference. I would suggest that you contact the Commissioner of Revenue in order to clarify the issue of back taxes due and owing.

The re-plating of the property with the signature of the City Manager and the clarification of the back taxes is necessary to clear title in this matter.

If I can be of further assistance, please communicate with me.

Very truly yours,

Jonathan S. Gibson, III

JSG,III:met

cc: Charlie Brown, Asst. City Manager
John Dressler, Commissioner of Revenue

CITY OF POQUOSON
830 Poquoson Avenue
Poquoson, Virginia 23662
(804) 868-7151

OFFICE OF THE CITY MANAGER

August 11, 1981

Mr. Ralph M. Goldstein
Attorney at Law
14801 Warwick Boulevard
Newport News, Virginia 23602

RE: Edbar Estates Corporation
Holloway Forrest
Poquoson, Virginia

Dear Mr. Goldstein:

As per our discussion on Friday, August 7, 1981, I have reviewed the City's subdivision ordinance and how best to address your request to additionally subdivide that parcel of property standing in the name of Mr. Percy Smith as President of Edbar Estates Corporation.

The plat you have presented the City is in essence a subdivision of a parcel that appears to have been intended to be access to property located to the north of the Holloway Forrest Subdivision. As the City Attorney mentioned in his letter of April 2, 1981, the request for a replat of that strip was so that if the adjacent property owners purchased their respective 25 feet of the 50 foot strip it would then show as one contiguous part of either lot 31 or lot 32. What you have accomplished in this plat is to just subdivide one 50 foot parcel into two 25 foot strips. That in fact violates the City's subdivision ordinance as neither lot would be available for any building whatsoever.

If the adjacent property owners of lot 31 and lot 32 do not wish to purchase their respective share of that strip of land, possibly the owners of the parcel to the north might be interested.

If I might be of any additional assistance, please do not hesitate to call.

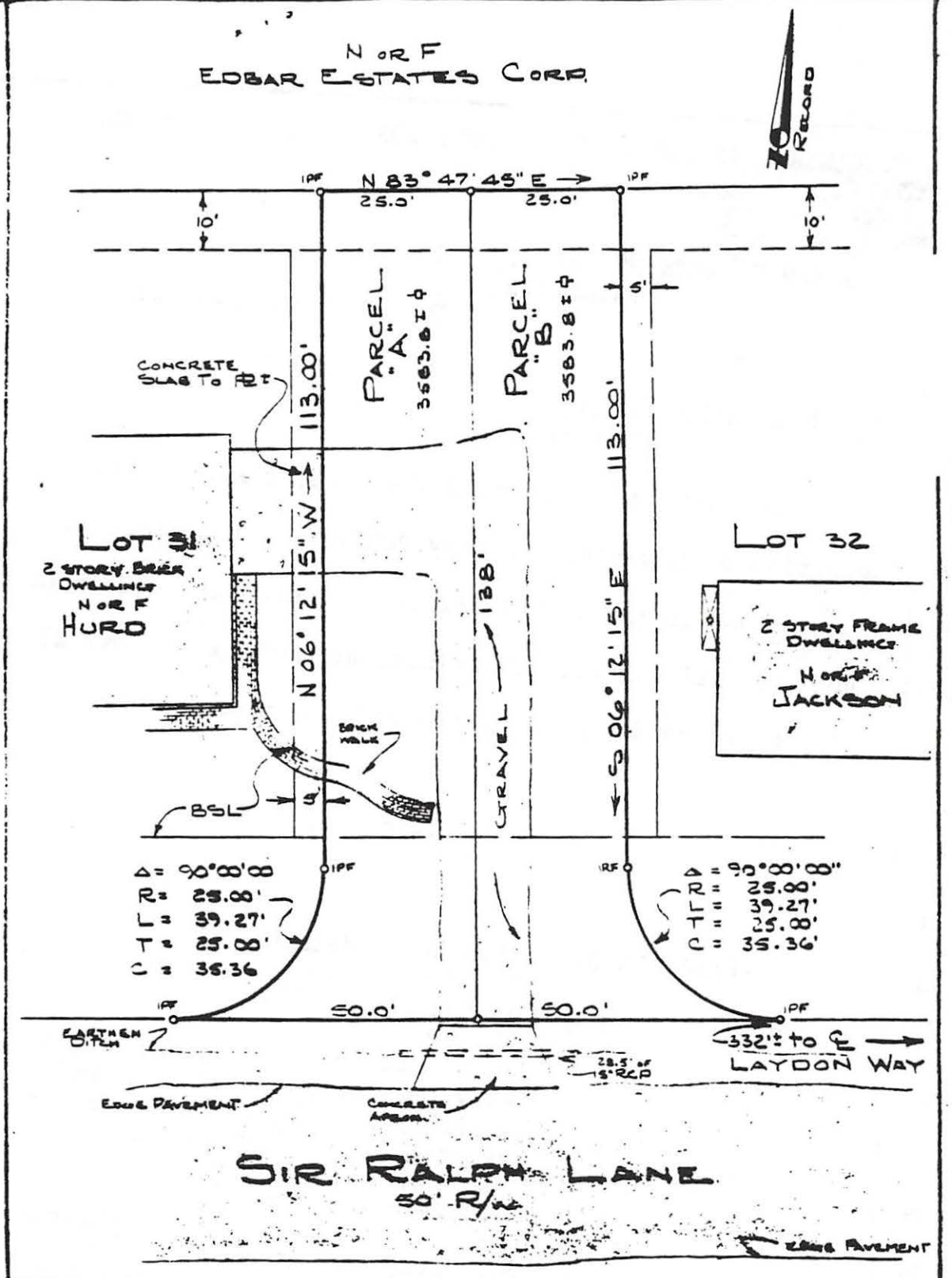
Sincerely yours,

Smith Trustee Exh. No. 4

C R Brown

Charles R. Brown
Assistant City Manager

CRB:jfw



Smith Trustee Exh. No. 5

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al, Plaintiffs,
v
JOSEPH E. HURD, et al, Respondents.

IN CHANCERY
6286

Deposition of Robert J. Watkins, taken before Catherine B. Edwards, a Notary Public for the State of Virginia at Large, at the offices of Smith and Abdelnour, 1949 Route 17, Grafton, Virginia, at 10:00 a.m., May 21, 1985, to be used in the above-entitled cause.

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APPEARANCES: Smith and Abdelnour (Mr. James H Smith), attorneys for the plaintiffs.

Jones, Blechman, Woltz and Kelly (Mr. Conway H. Shield and Ms. Robyn C. Hylton), attorneys for Joseph E. and Annette Hurd.

Goldstein and Murov (Mr. Ralph M. Goldstein), attorneys for Percy Smith.

McGuire, Woods and Battle (Mr. Stephen D. Harris), attorneys for Peter H. and Peggy L. Carr.

Mr. Benjamin M. Hahn, Attorney for the City of Poquoson.

WATKINS EXH. NO. 1

I N D E X

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ROBERT J. WATKINS, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. SMITH:

Q Would you state your full name and your occupation, please.

A Robert J. Watkins, attorney.

Q And how old are you, Mr. Watkins?

A I'm seventy-three.

Q Where do you live?

A I live at 15 Laydon Way, Poquoson.

Q Is that in the Holloway Forrest Subdivision?

A Yes, it is.

Q How long have you lived in Poquoson?

A Seventy-three years.

Q All of your life basically?

A That is correct.

Q Now you are familiar with the Holloway Forrest Subdivision?

A That's correct.

Q Did you own that property at one time?

A Yes, I did.

Q How long had you owned the property before it was subdivided?

A It belonged to my father. I was an only child. He died in August of 1960.

Q Who owned the property adjoining your piece of property that was subdivided?

A Several owners.

Q This is a copy of the subdivision plat of Holloway Forrest. Specifically, if I can ask you who owned the property lying to the north of this line which is along the north line of Lots 29, 30, 31 and 32.

A It belonged to the estate of my uncle, Wilbur Watkins and the parcel adjoining Wilbur Watkins to the north was another uncle, Wilbur L. Watkins, all deceased.

Q All this property, yours and the property to the north of those lots I referred to earlier, were all owned by members of the Watkins' family; is that correct?

A Yes. It contained the parcel I was referring to in here, contained about four acres, more or less. It was divided into two parts by a line running from east to west.

Q Did you sell your piece of property or did you subdivide it yourself?

A No. I sold the piece of property to Edbar Estates.

Q Who were the principals of Edbar Estates?

A Mr. Percy Smith and Mr. Paul Fay Holloway.

Q Did they do the actual subdivision of the property?

A Yes, they did. I made a preliminary survey by a local surveyor. When they did the subdivision, it was made by an engineering firm in Norfolk.

Q Did you have any discussions with either Mr. Holloway or Mr. Smith regarding the layout of that subdivision?

A Yes, with both Mr. Holloway and Mr. Smith. I required, as a condition preceding the selling of this land, that access had to be made to the adjoining landowners because there was an ordinance, for one thing. And the second reason was that I wanted the relatives who I had gotten the property from -- my grandfather -- also to have access.

Q This property that you have said belonged to the Watkins' lying to the north of Lots 29, 30, 31 and 32, to your knowledge, did that have any access out to a public road?

A No.

Q Now did you have any discussions or participate in any of the review of the subdivision drawings before they were approved?

A I was satisfied when the plat was shown to me

after it had been completed.

Q Does this record plat of the subdivision reflect what you said you were satisfied with?

A Yes.

Q It is shown on that plat a certain section which is the subject of this particular action. It shows a fifty-foot wide strip that is marked "Reserved." Do you have any recollection about discussions regarding that particular piece?

A It is obvious that it was reserved as a future public road because we were required that a radius be put on it. Why would you put a radius on it unless it is being used for a road?

Q Did you have any discussion with them about that particular piece of property?

A Only to the extent that it was reserved for a road.

Q Were you familiar with the Poquoson subdivision ordinance that was in effect in 1964 when that was --

A Yes. I was the town attorney. I drew the ordinance.

Q You had drawn the ordinance?

A Yes.

Q Did the ordinance, to your recollection,

provide any provisions with regard to access ways and streets to adjoining property?

A It simply incorporated existing public policy in relation to the free alienation of land.

Q To the best of your recollection, what were those provisions?

A Under the ordinance, you had to provide access to adjoining land so that it could have access to a public road if it had none.

Q Was it ever your intent to sell this property without any access being reserved?

A I would have refused to have sold it.

Q Do you remember any discussions with either Mr. Smith or Mr. Holloway with regard to your intentions of access?

A I explained my intentions, and no problem resulted as a consequence of explaining it. No one took issue with it. No one differed with it.

MR. SMITH: Answer any questions first of Mr. Goldstein. I guess we will go around the table.

EXAMINATION BY MR. GOLDSTEIN:

Q Mr. Watkins, do you have a financial interest in this corporation?

A None whatsoever.

Q These people who owned the four acres lying to the north, they are relatives of yours?

A Yes, they are.

Q What relationship are they?

A Their parents were my father's brothers.

Q So they are your first cousins?

A First cousins.

Q It was understood that the parcel was reserved so that they would have access -- that who would have access?

A That the owners of this property here would have access.

Q Was the road put in?

A No. The road wasn't put in. You mean: Was it physically developed?

Q Right.

A No, it wasn't physically developed.

Q Was there any talk of developing this road?

A According to the conversation they had with me, I think they had planned to sell the land.

Q Who is "they" that planned to sell the land?

A The children of the deceased parents, which would have been my cousins.

Q Have you discussed with them selling the land?

A No. They discussed it with me.

Q They discussed it with you?

A Yes. In relation to the road, they talked to me about the road. They wanted to know if the road had been reserved. Apparently they hadn't followed up on examining the subdivision plat showing it had been reserved. I advised there was a subdivision plat of record.

Q Who specifically did you speak with?

A I spoke with J. P. Watkins, son of Wilbur Watkins. And one of the reasons was that this was a considerable length of time after the subdivision had taken place, several years, maybe four or five years.

Q Was Edbar Estates interested in acquiring that piece of property from those estates?

A Right here?

Q Yes.

A I don't know.

Q Do you know if there were any discussions about that they might be purchasing that piece of property?

A No. I wasn't privy to any.

Q Did you ever have any interest at all in this corporation other than selling them the piece of land?

A None whatsoever.

Q Were you ever supposed to receive any percentage of the stock in the corporation?

A Never.

Q You don't recall any discussions --

A The answer is no, absolutely not.

Q There are some other places on this plat that have the word "Reserved" written on them. Do you know what they are for? I'm looking at one, which is at the southeasterly corner of the property, where they have a piece marked "Reserved." Do you know what that was for?

A For the same purpose, to give access to the land south of this. If ever a road was developed there, then this would revert back, and it says so on the face of the plat.

Q That is regarding this piece right here, in the southeast corner?

A And regarding this piece here on Sir Ralph Lane, the property which later on Mr. Hurd bought.

Q Is there any reference on the plat as to the subject matter of the suit that we are here on today? Was there any reservation on the plat or any comment made as to that piece?

A The question never arose. It was perfectly obvious what it was reserved for.

Q That is what you are saying. There was a reference made --

A I'm saying it based on my understanding of the purchase of the property.

Q -- there was a reference made to the piece marked in the southeast corner, is that correct, that is referred to in the notes on the subdivision?

A Yes, because the cul-de-sac was put there -- no -- the cul-de-sac was put here.

Q There was one which was made with reference to the piece at the end of Sir Ralph Lane; is that correct?

A That's correct. All for the same reasons.

Q There is no note on the plat in reference to the parcels that we are discussing today; is that correct?

A No note, for the reasons for which I stated. Let me answer the question: Because there was no cul-de-sac there.

Q There is no note on the plat here?

A I have answered that. I said "It is perfectly obvious."

Q Are there any other parcels that were reserved on the subdivision plat that you were aware of?

A Specifically what do you mean?

Q Do you know of any other parcels that were marked "Reserved" for future access?

A No. That was the only one that was reserved

because it was the only one in question.

Q This property that is on the south side of the property, was it landlocked, the estate of Wilbur Watkins?

A Yes, it was.

Q How about this piece over here that is marked "Nina Bunting"? Was that piece landlocked?

A No, it was not. In the subdivision of the estate of Thadeus Wilson, there was, I believe, a fifteen-foot easement that ran the city road. Mr. Early was unwilling to develop that.

Q You say that this piece of property that belonged to your cousin was landlocked?

A Yes.

Q What type of use was made of that property?

A It was woodland back when my grandfather owned it. It was important because you have the straw for your bedding, for your animals, and you got your wood. Back at that time, in the 1800s, it was used for firewood and straw for bedding.

Q Was there ever another four-acre piece that was owned by your grandfather?

A Yes, it was.

Q How did the property come to be a four-acre parcel? Do you recall that?

A It adjoined my grandfather. You can see that he owned from this ditch out to the intersection of what is now Poquoson Avenue and Little Florida Road.

Q He owned this piece here?

A Yes, he owned part of it.

Q Did he sell off some of the property?

A No.

Q How did this piece become separate from your piece of property?

A He died possessed of it. It was divided, partitioned between his children. Three of the children bought the interest of the other children. Then it was partitioned between them.

Q Who was the owner, at one time, of this whole piece? That was your grandfather? What was his name?

A Jeremiah Watkins. He didn't own this parcel here. This was owned by his brother. My father bought this from my grandfather's brother.

He owned this piece here, south of it. The land he owned was cut in two by this parcel you see here.

Q When was this property partitioned? It was after Jeremiah Watkins died?

A Yes.

Q Was this a partition by agreement or was there a partition suit?

A No. It was partitioned by agreement.

Q Do you know about what year that was?

A No, I don't remember. It was between the brothers the lawsuit was brought. As between the brothers who bought this property -- excuse me -- who bought this property here and who bought this property here -- which this now cuts one off from the other -- this rectangular parcel you see here separated my grandfather's estate, this parcel from this parcel.

This belonged to Robert Watkins, my grandfather's uncle. He bought this independently of his father.

Q The westerly part of this subdivision, this part?

A My father bought from this drainage ditch. Actually, later on he bought the property in here like this.

Later on Freeman Dryden and my father bought the remaining property and divided it between them.

Q At one time Jeremiah Watkins owned all of this piece?

A No.

Q He did not?

A He did not. This piece in here belonged to my

grandfather's brother, Robert Watkins.

Q Did Robert Watkins ever own this four-acre piece over here?

A Never.

Q Did anyone ever own this four-acre piece and part after your property that was subdivided?

A No.

Q Do you know what the source of title is of the people who owned the four-acre piece? Was that part of the partition?

A That was part of the partition after the lawsuit between the three brothers that bought. Three brothers bought my grandfather's real property, which was this four-acre piece, this piece here and the piece to the south of it.

Q So one time the four-acre piece was part of the property that was on the north side of this ditch?

A Yes.

Q Which is marked as a ten-foot drainage easement and runs south of Lot 5 and Lot 38?

A Yes.

Q Now who were those three brothers that owned all that?

A It was A. B. Watkins, my father; Wilbur Watkins, his brother; and W. L. Watkins, the third brother.

Q And they owned everything north of the ditch and to Little Florida Road?

A Yes.

Q Did they also own the land that was on Little Florida Road that --

A No.

Q -- would be north of the four-acre parcel?

A No. That was a separate estate.

Q The Watkins family didn't own or have connection with that piece at all?

A None whatsoever.

Q How did this four-acre piece get cut off from this other property that was owned by the Watkins family?

A The three brothers agreed to give this parcel, as you see it here --

Q That is everything north of the lots, including Lots 38 and 5 out to Little Florida Road?

A Yes. My father agreed to give his two brothers, W. L. Watkins and Wilbur Watkins this four-acre parcel here.

He also agreed to give them -- bear in mind when I say "them," the two of them -- one half each -- this parcel -- which was owned by my grandfather, Jeremiah Watkins, which is south of the subdivision.

Q What access did they have to get to Little Florida Road or to get out of the property?

A None.

Q They agreed to accept a piece of property that was landlocked?

A Yes.

Q Did they ever use it for anything?

A Yes.

Q What did they use it for?

A They cut timber on it.

Q How did they get to it?

A Through my father's property.

Q Was there like any kind of a lane there or any road?

A Yes, it was. There was a lane that ran like so and come on down to my father's land.

Q It ran through from Little Florida Road through Parcel A, Lots 1 --

A Ran through Parcel A, 1, 2, 3 and then it sharply cut like so.

Q Could you just designate -- so that it would be in the record -- over what lots it was running.

A Parcel A, Lots 1, 2, 3, Parcel B, Lots 4, 5, 6. Then there were cart lanes that ran through the woods, that ran to other properties where they had to use

them, where they were cultivating the land or whatever use it was putting it to.

Q When you sold your land here to the corporation, Edbar Estates Corporation, did you reserve any easements or anything like that for right-of-way for anyone else or for anyone?

A I agreed when the street was put in there to abandon the easements over the land so it could be sold by Edbar Estates. Otherwise they would have had easement -- easement of record with my father which my father gave me.

I built my house on this parcel of land on Parcel B. I reserved that. I reserved Parcel A.

Q So there were easements of record in your chain of title for those parcels that gave you a right-of-way to Little Florida Road or to where?

A When my father gave me a parcel of land here --

Q Is that Parcel B you are referring to?

A Yes. -- he didn't give me all of Parcel B. He only gave me a part of it. He had land all around on every side. I had to have some way to get to the intersection of Little Florida Road and Poquoson Avenue.

He gave me an easement over the old existing roadway that came into his house. Here is where he lived. He lived on 8. He lived on Lot 8. That is where his home was built. It was about fourteen hundred feet from his home

to the highway.

Q So when you sold this property to the corporation, you released or abandoned your interest in that right-of-way?

A Yes. Otherwise they would have had that cloud on the title. They couldn't have used it because it would have gone -- as it came on down here and got to Parcel B -- it would have gone through the center of some of these lots.

Q Were there any other easements provided for or reservations in the deed from you to the corporation?

A Not to my knowledge. There was a VEPCO power line that ran down there at the request of -- I don't remember who. I think it was Lot 2. I can't think. It was a very unusual name. I can't remember the name of the gentleman.

In any event, he wanted to put in a swimming pool. The city wouldn't allow him to do it with an electric line running over the property. I agreed to abandon that so he could put in his swimming pool.

Q Was there any correspondence between you and Mr. Smith and Mr. Holloway or the corporation or the attorney representing them regarding the need to reserve rights-of-way to this four-acre piece?

A I don't recall. I don't recall any

correspondence.

Q Was it a term of the contract between you and Edbar Estates Corporation that there had to be parcels reserved for a right-of-way to the Watkins' four-acre parcel or any of these other parcels?

A I would have to review the contract to refresh my recollection. It has been quite a long time ago. I haven't looked at it since.

Q Do you still have the contract or the file regarding the sale of this piece of land?

A I probably do. I recently moved. My files are unpacked. They were packed in paper cartons.

Q Did the Watkins people who owned this four-acre piece at any time prior to the time you sold this property to the corporation ever ask you for a right-of-way out to Little Florida Road?

A It was never discussed except at the time it was sold.

Q The people who own it now, they are not the people who acquired it from your father?

A It was their father. They are the children.

Q So they were heirs to the property?

A Yes.

Q Was it commonplace in those days that when property was transferred that someone would acquire a

landlocked parcel?

A I don't understand your question.

Q A landlocked parcel would not have any value, as such, because it does not have access to it?

A I understand.

Q Was this a gift or was it a sale to these people?

A No.

Q Was it a gift?

A No. It was inherited.

Q Did they have like a percentage interest in a piece of land and their interest was parceled out according to their percentage in the property?

A I don't know what they did between them when it was divided. At that time, I was a student at William and Mary. It was done when I was not home. I was not privy to any conversation that took place between the brothers. They were represented by counsel. I think Paul Crockett was one attorney. I think that Mr. J. Winston Reed, in Newport News, was another attorney.

Q As far as you know, they took title to a piece of landlocked property?

A So far as I know, that is exactly what they did. I don't know how they arrived at it. But if you give me just a moment to refresh my recollection.

The judge of the Juvenile and Domestic [redacted] Court, his father, was one of the attorneys. [redacted] What is his name in Newport News?

Q Wyler?

A Wyler. Wyler and J. Winston Reed and Paul Crockett were the attorneys involved in the suit that was brought.

MR. GOLDSTEIN: Those are all of the questions I have.

EXAMINATION BY MR. HAHN:

Q Do you remember who represented Edbar Corporation in this subdivision, the attorney? Did they have one?

A I'm not sure who their attorney was. I think it was an attorney in Newport News, Bill Milner, I believe. I stand to be corrected on that. Billy Milner, I believe, was the attorney.

Q The plat indicates that the parcel was to be reserved. It is laid off with your radius turned. Was there any bonding agreement concerning the future construction of that road that you know of?

A I have no recollection of that. As a matter of fact, I wasn't concerned with that. That was the duty of the developers. My interest in it was the sales price.

It was financed over a period of some several years. Meeting the requirements of the subdivision ordinance was squarely on the developers. I had no concern with that.

Q To your knowledge, there was never any instrument or any mechanism to force that road to be developed on the part of the city?

A I have no knowledge as to what occurred between the city and the developers. I didn't participate in that.

Q Just as a hypothetical, based upon your knowledge of the situation and as an attorney, given the fact that the parcel was reserved for the construction of a road and the corporation is now defunct, no longer in existence, whose responsibility would it be to pave the road to provide access to the adjoining parcels?

A I wouldn't know. I wouldn't venture to answer at this time.

MR. HAHN: Those are all of the questions I have.

THE WITNESS: May I see the plat. I notice on this plat that the land adjoining this subdivision on the north is now formerly Edbar Estates. That isn't correct. It was never Edbar Estates. That is the one that the city approved.

MR. HAHN: That is all I have.

EXAMINATION BY MR. SHIELD.

Q Mr. Watkins, let me ask you a question. I understand that the four acres behind the subject parcel here today was, at one time, owned by W. L. and Wilbur Watkins.

A Yes.

Q They were uncles of yours, brothers of your father?

A Yes.

Q The complaint in this matter has been brought by five people, Benjamin W. Watkins, Frank H. Watkins, Elsie W. Poole, Bertie Lee W. Ellswick, Francis Watkins. Can you tell me who those people are and where they live?

A They are the five children of W. L. Watkins, who owned one half of this four-acre tract. The remaining one half of the four-acre tract was owned by J. P. Watkins, who was the only heir of law of Wilbur Watkins, his father.

Q So the other one owned by J. P. Watkins was the son of Wilbur?

A Wilbur Watkins.

Q Where is J. P.? Is he alive?

A Yes. He lives in what used to be known as East Hampton. I don't know the address.

Q You don't have a street address for him?

A No.

Q Is it the City of Hampton?

A Yes.

Q Is he employed?

A Retired now. He owns Watkins Feed and Seed Company on West Queen Street. He sold that.

Q As to these other heirs, Ben and Frank Watkins, who are the two sons of W. L. or two of the sons of W. L., are they living in Poquoson or living somewhere around here?

A No. I believe they live in Hampton. I'm not sure about the girls. I don't know their whereabouts. I haven't seen them for years.

Q You don't have any identifying address I could have on them?

A As a matter of fact, I rarely ever see them except at funerals or weddings. That is about the only time I ever see them.

Q You don't know what they did for a living either?

A I don't want to misinform you. I believe they worked at Langley Field. I don't know whether it was the Air Force or whether it was NASI. I'm not sure.

Q What about the three girls, Elsie Poole,

Bertie Lee Ellswick and Francis Watkins? Are they local?

A No. I haven't seen them. I suppose it has been thirty years.

Q They are out of town?

A Yes. I don't know where they live. I have no contact with them whatsoever.

Q You have indicated to questioning by Mr. Goldstein that there was a time that you discussed with the developers of Holloway Forrest that there would be an access in this four-acre tract.

A I required it as part of the sale.

Q Was there any definition of what sort of access that was to be?

A Yes. It was understood that it was in compliance with the subdivision ordinance which, at that time, required fifty foot in order to receive compensation from the State of Virginia for maintenance of the highway.

Q Was that ever memorialized in writing?

A I don't know. I left it to -- I had known Paul Fay Holloway from the time of his birth. I suppose I had more conversations with Paul Fay than I did Mr. Smith because he lived in Poquoson. He was the one who first approached me to buy this. At first I didn't really know that he was associated with Mr. Smith when he first approached me. He told me later on that he was.

But he approached me on it based on if I would be interested in selling the farm I had. The reason I sold it was because you would starve to death trying to operate it -- it was growing up in weeds -- and paying taxes on it. I considered selling it.

Q I guess what I'm trying to get at is: Since this is discovery, what manifestation is there of that agreement other than the plat that was recorded on Holloway Forrest? Is there an agreement, any other memorandum or writing we might find that we might stand to put the access in?

A I don't recall any. I was satisfied with the presentation to me of this plat, with the indication that I would approve it. When it was presented to me and I learned that the city would approve it as finally drawn, then it met my requirements. I had no further questions about it.

Q Do you recall at the time that it was presented to you -- in response to Mr. Goldstein's question that there was no notation in this particular piece marked "Reserved" Lots 31 and 32 -- that there was reservation for a right-of-way?

A No. The plat I relied upon, Mr. Shield, was the one I have here before me. This plat you see here satisfied my requirements completely. I had no

questions about it. I knew Mr. Holloway all of his life. [redacted]pon what he told me.

Q Was there any discussion, to your knowledge, after the subdivision plat was recorded by the people who owned the four acres of development of that four-acre tract?

A Repeat that question.

Q Was there any discussion that you were a part after the recording of the plat in which they discussed development of this property?

A I recall none.

Q Did they ever talk to you, after the plat recordation, about the property?

A Not to my knowledge.

Q Getting back to my original question, I take it then that it is your position that J. P. Watkins would own an interest in this property, this four acres?

A He would own a half interest.

Q You had reserved parcels A and B. Are they outside of the subdivision, Mr. Watkins?

A No. Parcel A was sold to C & P. Parcel B, I have.

Q For your house?

A Yes.

Q But are they outside the subdivision?

A They were accepted. One thing that did [redacted] -- after your question refreshed my mind on it -- after I observed this, Mr. Smith and Mr. Holloway requested me to sign a paper where I would become a part of the subdivision so the application of it would be uniform, that is, so you couldn't build more than one building, that sort of thing, on a lot. It was to comply with the covenants that they had of record. I did sign that paper.

Q Mr. Watkins, you say you drafted the subdivision ordinance that was done.

A 1953, I guess.

Q Do you know whether that subdivision ordinance that you drafted had provisions in it for a plat approved authority?

A I don't recall the details. I would have to refresh my recollection by reading it. It has been a long time, '53.

Q Generally, that would have been the governing body of the town council since it was a town in those days?

A Yes.

Q Do you know whether or not the town council was a plat-approving authority where they designated the town manager to do that?

A I'm not sure who the town manager was at that

time. I think it was Mr. Larew, but I'm not absolutely [redacted] is now deceased. He would have been the plat-approving authority, I believe.

MR. SHIELD: That is all I have. I may have some later.

THE WITNESS: I have one comment I would like to make.

At the time just prior to the selling of this property by me to Edbar Estates, I had talked with my cousins about this property. I wanted to do something with it because it was growing up. I didn't receive any cooperation. They had no interest in it whatsoever.

What I did on my own was something I volunteered to do because I thought I was complying with the subdivision ordinance. I got no cooperation with them in any way, shape or form. I did this because I thought I was required to do it. That is why I did it.

That's all.

MR. HARRIS: I don't have any questions.

MR. SMITH: I don't have any questions. Thank you very much. I appreciate it.

Do you want to waive your signature to the deposition?

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THE WITNESS: Yes. I trust the lady.

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REPORTER'S CERTIFICATE

STATE OF VIRGINIA,

CITY OF GRAFTON, to-wit:

I, Catherine B. Edwards, a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of Robert J. Watkins was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 22nd day of August, 1985.

Catherine B. Edwards
Notary Public

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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN M. WATKINS, et al,)
Plaintiffs,)
) IN CHANCERY
v) 6286
)
JOSEPH E. HURD, et al,)
Respondents.)

Deposition of George Dickerson, taken before Catherine B. Edwards, a Notary Public for the State of Virginia at Large, at the offices of Smith and Abdelnour, 1949 Route 17, Grafton, Virginia, at 1:10 p.m., May 21, 1985, to be used in the above-entitled cause.

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APPEARANCES: Smith and Abdelnour
(Mr. James H. Smith), attorneys
for the plaintiffs.

Jones, Blechman, Woltz and
Kelly (Mr. Conway H. Shield and
Ms. Robyn C. Hylton), attorneys
for Joseph E. and Annette Hurd.

Goldstein and Murov
(Mr. Ralph M. Goldstein), attorneys
for Percy Smith.

McGuire, Woods and Battle
(Mr. Stephen D. Harris), attorneys
for Peter H. and Peggy L. Carr.

Mr. Benjamin M. Hahn,
Attorney for the
City of Poquoson.

WATKINS EXH. NO. 2

I N D E X

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GEORGE WILLIAM DICKERSON, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. SMITH:

Q Would you state your full name and your current occupation and where you live.

A George William Dickerson. I'm retired from the U. S. Army. I live at 14 Carroll Drive, Poquoson, Virginia.

Q General Dickerson, you were the city manager of the City of Poquoson for many years, were you not?

A Town and city.

Q Can you tell us what period of time you were town and city manager?

A Well, let's see. 1972 to about 19 -- it was seven and a half years. '79, '77, '78, somewhere in there.

Q After you resigned from your position as city manager, were you later called upon to come back and act as city manager for a period of time?

A Yes.

Q When was this?

A August of '83, 1983.

Q And you were doing that primarily on a voluntary

basis at that time?

A Uh-huh.

Q You are aware of what we are here for today regarding a fifty-foot piece of property in Holloway Forrest. What I want to do is ask you if you have seen this boundary adjustment plat here before.

A Yes.

Q Can you tell us what you remember about the circumstances surrounding your approval of this boundary adjustment, anything at all that you remember?

A All right. When this was first presented to me, I was astonished. For seven and a half years, as city manager, I recognized this little piece. It was marked "Reserved" as actually belonging to the City of Poquoson.

From time to time, when property owners asked about buying it, I did not allow it. I assumed it was donated to the city when we accepted the subdivision.

After I came back on duty, I was told that it had been determined that the city did not own that piece of land, that there was nothing recorded showing that it belonged, the fact that it was a funny wording -- it was worded "Reserved," it didn't say dedicated as the more modern plats or developments usually do.

So I looked back in the record. I found out that since my departure -- I believe April 2nd of 1981 --

the record will show Jonathan Gibson, who was the city attorney, ruled that the seller had reserved this parcel unto himself and the city did not own it. There is a reference of Section 15.1-478, Code of Virginia.

He further stated that the owner could sell this parcel to anyone. Nothing could be constructed upon it. He ruled Mr. Smith was liable for taxes.

In the interim, the commissioner had picked this up as a parcel of land in the city that was not on the tax records. Since it didn't belong to the city, he sent Mr. Smith a tax statement.

Q Did you ever have any discussions with Percy Smith regarding this piece of property that you recall?

A Not to my knowledge.

Q Did Mr. Dressler ever discuss it with you?

A I discussed it with him when this came to me for approval. I looked back and found out the city had, in fact, given authority to sell it in -- let's see. Wait a minute. Let me get my dates right here.

On August 11, 1981, the city had reviewed a plat concerning this fifty-foot parcel. It was turned down in that it was not acceptable to the city because it had been divided in half.

The city manager at that time stated that the property, if sold, would have to be sold as one continuous

part of either Lot 31 or 32. They are adjacent lots on each side. This was in '81.

When this came to me, after reviewing the file -- and this conformed to everything the city had asked -- I approved it based on that after discussing it again with the current city attorney and with the commissioner of revenue.

Q Now in the years that you were city manager there, you were familiar with the town and the city's subdivision ordinances, were you not?

A Right.

Q In approving other subdivisions, was there a requirement that there be access made to adjacent properties that otherwise would not have any access?

A Yes, very carefully done. We examined all adjacent land. I assumed that this was just -- I wasn't worried with the word "Reserved." It didn't bother me. I assumed it belonged to the city.

Q Do you remember who it was that actually presented this plat to you for approval?

A I'm a little hazy on that. It seemed to me that Jonathan Gibson brought it by my office. I'm not sure. I couldn't say. I hadn't been back but two or three days when this came up.

I held it because I wouldn't approve it when

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I first saw it. I said, "No way to sell that." Then I looked in the file and found out that actions had been approved by the city, and that attempts had been made to tax the owner.

Q To your knowledge, there was never any official action by the city council to approve this or to reestablish those lot lines, was there?

A I don't know. Not while I was city manager.

Q In your review of the file --

A I don't think I saw anything there other than the action by the city manager.

Q This plat -- and it is hard to read here. Maybe we should look at the copy here -- indicates here that it was the property north of this particular place, "Now or Formerly of Edbar Estates Corporation." Did that come to your mind at all or affect your decision at all in approving this or not approving it?

A None whatsoever.

Q You didn't discuss with anybody who the owner of the property was north of this particular piece of property?

A No.

Q Or whether they had been notified?

A No.

Q Do you know from reviewing the file of your

own knowledge whether the adjacent owners were ever notified that any action was being taken on that piece of property?

A Well, I assumed they were back when the city approved this in 1981.

MR. SMITH: Okay. I guess we will start with Mr. Goldstein.

MR. GOLDSTEIN: I will pass for right now. I'll come back later.

EXAMINATION BY MR. HAHN:

Q General Dickerson, you stated you had just been in office a couple of days when this came up. You primarily went back to the file and reviewed the file on it and talked with the commissioner. Could it be that you are mistaken when you said that you then reviewed it with the present city attorney on that matter?

A I say I may have.

Q You find plenty of evidence in the file, itself, to indicate to you that the city shifted positions since you left, and you would not have let them or anyone purchase that property?

A That's true.

Q That was based on the letter from the assistant city manager relying on a letter from the then

city attorney?

A That's it. I think that is the main document that indicated to me that the plat had conformed to what the city had required.

Q So the scenario was: During your tenure, your seven and a half years, you would not let it be developed because you were thinking it had been dedicated to the city? Then when you came back in after a lapse of time, you found the file had reflected these dedications had been made?

A Right. I discussed it with the commissioner of revenue. He gave me the background. That is where, I assume, I also talked to you. I can't swear to that.

MR. HAHN: That is all I have.

EXAMINATION BY MR. SHIELD:

Q General Dickerson, you indicated that somebody came to the conclusion that this property was reversed to the developer -- not necessarily you, but somebody in authority in Poquoson?

A Yes.

Q Do you know who that would have been?

A I believe it is Jonathan Gibson who was the city attorney at that time.

MR. HAHN: I think that letter was introduced.

THE WITNESS: The wording says "Reserved unto himself."

BY MR. SHIELD:

Q Somebody took the position -- you think it was a determination by Mr. Gibson in the form of an opinion -- which was then relied upon by various officials in what, I guess, was in the City of Poquoson?

A Right. I think that was accepted by the then city manager. In '81, it would have been John Rowe.

MR. SMITH: I think we can refresh everybody's memory. It was Charlie Brown, Assistant Manager. Those two letters are in evidence here.

BY MR. SHIELD:

Q As I understand it, you are the authority in Poquoson that would approve this type of plat once it is done, assuming it is in order?

A Assuming that it is in order, doesn't violate any ordinances or desires of council.

Q At the time you signed this, I take it you thought it was in order based, in some part at least, on evidence that was provided to you by others that it was so in order?

A The file and my conversations with the

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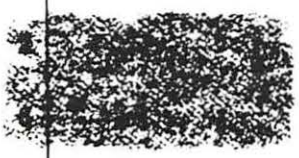
commissioner of revenue.



MR. SHIELD: No further questions.

MR. HARRIS: No questions.

MR. GOLDSTEIN: I will pass.

MR. SMITH: We certainly thank you, General.

You have the right to read over your deposition once it is typed up and to sign it. You can just waive your signature to it today. I'm sure that she will type it up very accurately.

THE WITNESS: I will waive it.

MR. SMITH: Thank you very much.

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REPORTER'S CERTIFICATE

STATE OF VIRGINIA,

CITY OF GRAFTON, to-wit:

I, Catherine B. Edwards, a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of George William Dickerson was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 12th day of August, 1985.

Catherine B. Edwards
Notary Public

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Watkins' Exh. No. 3

CHAPTER 26.

SUBDIVISIONS.

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§ 26-1. Definitions and construction—Enumeration of certain definitions.
§ 26-2. Same—Application of certain constructions.
§ 26-3. Same—What constitutes a subdivision in existence at date of adoption of chapter.
§ 26-4. Limitation on resubdivision.
§ 26-5. Deed restrictions or covenants preventing construction of substandard buildings, etc.
§ 26-6. Provision required for maintenance of sewers, water mains, park areas, etc.
§ 26-7. Appellate procedure.
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§ 26-35. Dedication of portion of right of way when new subdivision abuts on one side of existing or platted street.
§ 26-36. Setback lines.
§ 26-37. Easement for widening, etc., of surface-drainage course.
§ 26-38. How lots laid out generally; angle of lot lines.
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§ 26-40. Minimum average width and depth of lots.
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§ 26-42. Minimum lot area.
§ 26-43. Bench mark on permanent boundary marker.
§ 26-44. Public-service easements.

Article IV. Improvements, etc.

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Subdivision I. Generally.

§ 26-45. Installation by subdivider.
§ 26-46. Roads and streets—Street construction generally.
§ 26-47. Same—Application of base course, etc.
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§ 26-52. Street signs.

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§ 26-53. To be furnished to, and approved by, plat-approving authority.
§ 26-54. Required plans.

Division 2. Reference Monuments.

§ 26-55. Composition; location.

Article I. In General.[1]

Sec. 26-1. Definitions and construction—Enumeration of certain definitions.

For the purposes of this chapter, the following words and terms shall have the meanings respectively ascribed to them by this section:

Alley. The word "alley" shall be taken to mean a minor public street, primarily intended to serve as access to the side or rear of lot or lots.

Cul-de-sac. The term "cul-de-sac" shall be taken to mean a local public street with only one outlet and provided at the interior end with a suitable arrangement for safe and convenient reversal of traffic.

Easement. The word "easement" shall be taken to mean a grant by a freeholder of the use of specified land for a specific and limited purpose.

Frontage. The word "frontage" shall be taken to mean the width of a lot as measured along the common boundary of such lot with the street which forms the principal access thereto.

Local street. The term "local street" shall be taken to mean a public street primarily designated to serve as access to abutting property.

Local thoroughfare. The term "local thoroughfare" shall be taken to mean a public street primarily designated to serve as access to abutting property and to provide secondary through traffic.

Lot. The word "lot" shall be taken to mean a parcel of land occupied or to be occupied by a building or buildings, or other physical development for residential, commercial or industrial use, and including such open space as may be required, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

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1. For state law as to land subdivision and development, see Code of Va., §§ 15.1-465 to 15.1-485.

For charter provision as to subdivisions generally, see Char., art. 2, § 9. For charter provisions as to subdivision control, see Char., art. 8, §§ 16 to 25.

Lot depth. The term "lot depth" shall be taken to mean the average distance between front and rear lot lines.

Lot width. The term "lot width" shall be taken to mean the average distance between the side lot lines.

Plat-approving authority. The term "plat-approving authority" shall be taken to mean the town council or its designated agent for the town and the council of the municipality, or its designated agent in areas where joint control has been established, or the board of supervisors of the county or its designated agent, shall be the plat-approving authority. The plat-approving agent for the town shall be the town manager.

Public street. The term "public street" shall be taken to mean an existing or platted street, dedicated for the use of the general public, on which all persons have equal right to travel, transport persons or things, park or otherwise designated use.

Restricted thoroughfare. The term "restricted thoroughfare" shall be a public street designated to provide for the movement of through traffic, with access limited to designated, widely spaced entrances.

Street. The term "street" shall be taken to mean a strip of land subject to vehicular or pedestrian traffic, either or both, providing means of access to property, sometimes also designated as road, lane, drive, avenue, highway, boulevard, trail, court, place, terrace, etc.

Street width. The term "street width" shall be taken to mean the shortest distance between right-of-way lines of a street.

Subdivide. The word "subdivide" shall be taken to mean to separate any tract of land into more than two lots or other divisions of land at one time or over any extended period of time, except, however, the separation of any tract of land into lots or other divisions of land containing areas of two acres or more which does not involve any new public street or easement of access, or road, or partition of any tract of land ordered by a court of competent jurisdiction, devised, or where such conveyance is a bona fide gift from an immediate member of the family.

Thoroughfare. The word "thoroughfare" shall be taken to mean a public street designated to provide for the movement of through traffic. (Ord. No. 18, § 2-01; Ord. No. 75.)

Sec. 26-2. Same—Application of certain constructions.

As used in this chapter, the following constructions shall have application:

(a) Words used in the present shall include the future.

(b) Words used in the singular shall include the plural and vice versa.

(c) The word "shall" is mandatory and not permissive. (Ord. No. 18, § 2-01.)

Sec. 26-3. Same—What constitutes a subdivision in existence at date of adoption of chapter.

For the purpose of this chapter, any area of land which has been marked off into building lots and a plat of which has been recorded in the county clerk's office shall be deemed to be a subdivision in existence at the date of the adoption of this chapter.[1a] (Ord. No. 18, § 9-01.)

Sec. 26-4. Limitation on resubdivision.

Alterations of the size and shape of existing or recorded lots by resubdivision or by sale of parts of such lots shall not produce a holding which fails to conform to any of the minimum requirements of this chapter. (Ord. No. 18, § 7-01.)

Sec. 26-5. Deed restrictions or covenants preventing construction of substandard buildings, etc.

The subdivider may confer with the planning commission regarding regulations which should be placed upon the property, by deed restrictions or covenants, to prevent the construction of substandard buildings or other use which might depreciate the value of adjacent property. (Ord. No. 18, § 8-01.)

Sec. 26-6. Provision required for maintenance of sewers, water mains, park areas, etc.

Where a subdivision contains sewers, water mains, park areas, landscape development or other facilities which are of common use or benefit to the residents thereof and are not

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1a. The ordinance here codified was adopted November 9, 1953.

or cannot be satisfactorily maintained by existing public agency, provision shall be made for the proper and continuous maintenance and supervision of such facilities. (Ord. No. 18, § 8-01.)

Sec. 26-7. Appellate procedure.

The subdivider may, as a matter of right, appeal from any final decision of the plat-approving agent under this chapter to the town, which council shall hear such appeal at its next ensuing regular meeting, or sooner, at a special meeting called for the purpose. Upon the hearing of such an appeal, the town council shall render its decision at the completion of the hearing or not later than ten days thereafter. The subdivider may then, as a matter of right, appeal from the final decision of the town council, under this chapter, to the circuit court of the county. (Ord. No. 18, § 9-02.)

Sec. 26-8. Objectives of chapter.

The objective of this chapter is to secure the coordination of road and street layout and the proper construction of the same and to secure a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience and prosperity. (Ord. No. 18, § 1-01.)

Sec. 26-9. Enforcement; violation of chapter.

This chapter shall be enforced as provided by law. Any violation of this chapter shall constitute a misdemeanor and shall be punished as provided by law.[2] (Ord. No. 18, § 1-05.)

Sec. 26-10. When variations permitted.

A variation of the requirements of this chapter may be permitted only by the town council, when in their opinion, topography or other special or unusual conditions necessitate such variations. (Ord. No. 18, § 11-1.)

Sec. 26-11. Effective date.

This chapter shall be effective from and after the first day

2. For charter provision as to violation of subdivision regulations, see Char., ch. 8, § 24.

of December, 1953; provided, that in areas of joint jurisdiction it shall be effective after forty-five days from date of official notice, unless sooner approved, or on completion of procedure as set forth in Chapter 369, Acts of Assembly, 1946.[3]

Pursuant to article VIII, sections 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Charter, on and after the first day of December, 1953, this chapter shall be effective and applicable within the corporate limits of the town and within the area of joint jurisdiction, as provided in article VIII, section 16 of the Charter. (Ord. No. 18, § 10-1.)

Article II. Plats.

DIVISION 1. GENERALLY.

Sec. 26-12. Submission by owner of land who proposes to subdivide.

From and after the effective date of this chapter, any owner or proprietor of any portion of land in the town who proposes to subdivide the same, shall submit plats of such subdivision for review and approval in accordance with the regulations set forth in this article. (Ord. No. 18, § 1-02.)

Sec. 26-13. Preparation by surveyor.

Preliminary and final plats shall be prepared by a surveyor, duly authorized by the state to prepare such plats. (Ord. No. 18, § 3-01.)

Sec. 26-14. Approval by plat-approving authorities of town and county.

Whenever any part of the land subdivided lies within the areas of joint jurisdiction, and joint control has been established as provided in Chapter 369, Acts of Assembly, 1946,[4] then the plats shall be approved by the plat-approving authorities of both the town and the county. (Ord. No. 18, § 1-04.)

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3. Acts 1946, ch. 369 was codified as Code of Va., § 15-779, et seq. See Code of Va., §§ 15.1-465 to 15.1-485.

4. Acts 1946, ch. 369 was codified as Code of Va., § 15-779, et seq. See Code of Va., §§ 15.1-465 to 15.1-485.

Sec. 26-15. Fees for examination and approval of plats.

The town council by resolution shall establish, or change from time to time, a schedule of fees for the examination and approval of the subdivision plat by the plat-approving authority of the town and fees shall be deposited to the credit of the general town fund. (Ord. No. 18, § 12-1.)

Editor's note.—Pursuant to this section, the council adopted Resolution No. 214, which provides a minimum fee of seventy-five dollars for the examination and approval of subdivision plats by the plat-approving authority of the town, unless the subdivision in question exceeds fifteen lots, in which case there shall be an additional charge of five dollars for each lot above fifteen lots.

DIVISION 2. PRELIMINARY PLATS.

Sec. 26-16. Scale.

Preliminary plats shall be drawn to a scale not smaller than one inch equals two hundred feet. (Ord. No. 18, § 4-01.)

Sec. 26-17. Contents.

Preliminary plats shall show, as a minimum, the following:

(1) Name of subdivision, owner, subdivider, surveyor, date of drawing, number of sheets, north point and scale.

(2) Location of proposed subdivision by an insert map at a scale of not less than one inch equal one mile indicating thereon adjoining roads and their names or numbers and subdivisions.

(3) A boundary survey or existing survey of record, provided such survey shows a closure with an accuracy of not less than one in five thousand; total acreage, and acreage of subdivided area.

(4) All existing, platted and proposed streets and easements, their names, numbers, and widths; public areas and parking spaces; existing utilities; watercourses; their names and other pertinent data within or adjoining.

(5) Topography with such contour intervals as may be necessary to show the character of the terrain, properly correlated to the U.S.C. and G.S. or other recognized datum if such datum is available within one-half mile of the property. (Ord. No. 18, § 4-01.)

Sec. 26-18. Submission for approval generally; return of copy to subdivider.

Four copies of each preliminary plat shall be submitted to the plat-approving authority for approval. One copy, with the action of the approving authority or authorities noted thereon, will be returned to the subdivider. (Ord. No. 18, § 3-01.)

Sec. 26-19. Submission to plat-approving authority prerequisite to sale, etc.; report as to approval or rejection.

Before any sale or contract for sale of any subdivision or part thereof is made, and before any physical work is started thereon, a preliminary plat of the proposed subdivision shall be submitted to the plat-approving agent. The plat-approving agent shall report, within forty-five days, as to whether such plat has been approved or rejected. If the plat-approving agent fails to report within forty-five days, the plat shall be deemed to have been approved. The plat-approving agent shall give the subdivider a hearing when requested by either party. (Ord. No. 18, § 3-02.)

Sec. 26-20. Effect of failure to submit final plat within two years from approval.

A preliminary plat approved by the plat-approving authority, upon submission as provided in section 26-19, shall be void if a final plat has not been submitted two years from the date thereof. (Ord. No. 18, § 3-02.)

DIVISION 3. FINAL PLATS.

Sec. 26-21. Scale and form.

Final plats shall be drawn with ink or linen tracing cloth or equivalent to a scale not smaller than one inch equals two hundred feet, with letters not less than eight one-hundredths of an inch in height, on a sheet or sheets not less than twelve inches nor more than twenty-four inches wide and not less than eighteen inches nor more than thirty-six inches long. (Ord. No. 18, § 4-02.)

Sec. 26-22. Contents.

Final plats shall show, as a minimum, the following:

(1) Name of subdivision, magisterial district, town, precinct, county, state, owner, north point, the scale and date of drawing and number of sheets. If shown on more than one sheet, match lines shall clearly indicate where the several sheets join. A blank oblong space three inches by five inches high shall be reserved in the lower right-hand corner for the use of the approving authority.

(2) Location of proposed subdivision by an insert map at a scale of not less than one inch equal to one mile indicating thereon adjoining roads and their names or numbers, and subdivisions.

(3) A boundary survey with an error of closure within the limit of one in five thousand related to the true meridian and showing the location of all monuments and their type and material. The survey may be related to U.S.C. and G.S. state grid system. When check points are not available the surveyor shall observe magnetic declination from a monument true north line, and compute all bearings shown on the final plat to true meridian. When showing north arrow on final plats, the certifying surveyor shall show what means were used to establish the true meridian.

(4) A certificate signed by the surveyor certifying as to the correctness of the survey and plat, the place of record of the last instrument in the title chain, and as to compliance with this chapter.

(5) A certificate by the owner to the effect that the subdivision as appears in the plat is with the free consent and in accordance with the desire of the owners, proprietors and trustees, if any, which shall be duly acknowledged before some officer authorized to take acknowledgment of deeds.

(6) When subdivisions consist of land acquired from more than one source of title, the outlines of the various tracts, indicated by dashed lines and identification of the respective tracts shall be placed on the plat.

(7) The accurate location and dimensions by bearing and distances with all curve data, of all lot and street lines, and center lines of streets, boundaries of all easements, parks, or other public areas, the number of all building sites, all existing and platted streets, their names, numbers, widths, exist-

ing utilities, watercourses, and their names, names of owners of adjoining undivided property and their property lines, both within the boundaries of the subdivision and adjoining such boundaries, and the classification of the adjoining land.

(8) All dimensions shown in feet and decimals of a foot to the closest one-hundredth of a foot, all bearings in degrees, minutes and seconds to the nearest ten seconds.

(9) Data for all curves along street frontages, which shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, arc, tangent, and when necessary, chord, and chord bearings.

(10) All lot areas, frontages and depths.
(Ord. No. 18, § 4-02.)

Sec. 26-23. Prerequisites to approval.

Final plats shall be approved by the plat-approving authority, provided:

(a) Such plats conform to the preliminary plats as approved and the provisions of the chapter.

(b) All physical improvement required by this chapter have been installed in a manner satisfactory to the plat-approving authority; provided, however, that, in lieu of actual installation of such improvement, the plat-approving authority may accept a surety bond in the amount of the estimated cost thereof, guaranteeing that such improvement will be installed within a designated, reasonable length of time. The form of agreement, bond, surety and length of time shall be established by the plat-approving authority according to the nature and extent of the improvements required. (Ord. No. 18, § 5-06.)

Sec. 26-24. Submission for approval; return of copies to subdivider; submission for recordation.

Five copies of each final plat shall be submitted to the plat-approving authority for approval. Two copies, with the action of the plat-approving authority noted thereon, shall be returned to the subdivider. One permanent reproducible copy of the approved plat, shall be submitted for endorsement thereon and to be recorded in office of the clerk of the circuit court in the county and the one permanent reproducible copy of the approved plat shall be submitted for endorsement thereon

and to be recorded in the office of the town manager. (Ord. No. 18, § 3-01.)

Sec. 26-25. Approval prerequisite to recordation.

The clerk of the circuit court of the county, shall not file or record any final plat until such plat shall have been finally approved for recordation by the plat-approving authority and such approval evidenced thereon. (Ord. No. 18, § 1-03.)

Sec. 26-26. Recordation within ninety days.

The recordation of a final plat approved for recording shall be accomplished within ninety days of approval. Failure to so record a final plat shall result in the voiding or invalidity of the final plat in question. (Ord. No. 18, § 5-06.)

Article III. Layout Requirements.

Sec. 26-27. Compliance with article.

Subdivisions made pursuant to this chapter shall be in compliance with the layout requirements and provisions of this article.

Sec. 26-28. Names of new subdivisions.

The name of a new subdivision shall not duplicate or closely approximate the name of any existing subdivision in the town or area of joint jurisdiction. (Ord. No. 18, § 5-01.)

Sec. 26-29. Names of new streets.

Street names shall not duplicate existing or platted street names in the same jurisdiction unless the new street is a continuation of or in alignment with the existing or platted street. (Ord. No. 18, § 5-01.)

Sec. 26-30. Assignment of house numbers.

House numbers shall be assigned, if required, by the plat-approving authority. (Ord. No. 18, § 5-01.)

Sec. 26-31. Minimum right-of-way widths generally.

Streets shall have minimum right-of-way widths meeting the requirements of the state department of highways and of the town, as follows:

1. Alleys	20 ft.
2. Service drives	30 ft.
3. Local streets	50 ft.
4. Local thoroughfares	60 ft.
5. Avenues	80 ft.

(Ord. No. 18, § 5-02; Ord. No. 75.)

Sec. 26-32. Street intersections.

Streets shall intersect at angles not less than eighty degrees nor more than one hundred degrees. Intersections shall be provided with easement curves of radii not less than twenty-five feet; provided, however, that greater radii may be required in special conditions at the discretion of the plat-approving authority. (Ord. No. 18, § 5-02.)

Sec. 26-33. Cul-de-sac streets.

Cul-de-sac streets shall be provided with turn-arounds with minimum right-of-way radius of fifty feet. (Ord. No. 18, § 5-02.)

Sec. 26-34. Relation between streets and streets in adjoining areas.

Streets shall be provided as necessary to provide connections to all existing or platted streets in adjoining areas and to provide access to any such areas as may not be already provided with existing or platted streets. No new street shall have a right-of-way width less than that of any existing street of which it forms an extension. (Ord. No. 18, § 5-02.)

Sec. 26-35. Dedication of portion of right of way when new subdivision abuts on one side of existing or platted street.

When a new subdivision abuts one side of an existing or platted road or street, the subdivider shall not be required to dedicate more than one-half of the right of way necessary to make

such street comply with the minimum width fixed for the same, measured from the existing centerline; provided, however, that the distance between curb lines shall be not less than thirty feet on fifty feet street nor less than forty feet on sixty feet street nor less than sixty feet on eighty feet street. (Ord. No. 18, § 5-02.)

Sec. 26-36. Setback lines.

Front setback lines not less than thirty feet and side setback lines not less than five feet from the lot lines shall be clearly shown on a final plat.

Corner lots shall have sufficient width on each street to permit the establishment of setback lines on both streets. (Ord. No. 18, § 5-02.)

Sec. 26-37. Easement for widening, etc., of surface-drainage course.

Whenever any important surface-drainage course is located in an area to be subdivided, the subdivider shall provide an adequate easement along each side of such surface-drainage course, for any necessary widening, deepening, back sloping or protection of such drainage. (Ord. No. 18, § 5-02.)

Sec. 26-38. How lots laid out generally; angle of lot lines.

Lots shall be laid out to the best advantage of the property, with due consideration to ground contours and natural boundaries. As far as practicable, lot lines shall be at right angles to straight lines or normal to curved street lines. (Ord. No. 18, § 5-03.)

Sec. 26-39. Length of blocks; reserve strips.

Blocks shall generally be not longer than one thousand feet between street intersections. Reserve strips protecting the use of dead-end and boundary streets will be permitted on condition that such reserve strips shall become null and void and thereby automatically dedicated for public street purposes, when land abutting thereon is dedicated for public street purposes. (Ord. No. 18, § 5-03.)

Sec. 26-40. Minimum average width and depth of lots.

No lot shall have an average width of less than seventy-five feet or an average depth of less than one hundred fifty feet and the average width shall not be less than one-third of the average depth. (Ord. No. 18, § 5-03.)

Sec. 26-41. Width of lot at setback line.

All platted lots shall be provided with minimum widths, at the setback line, of seventy-five feet. (Ord. No. 18, § 5-03.)

Sec. 26-42. Minimum lot area.

In area where both public water and sewers are available the minimum lot area shall be eleven thousand two hundred fifty square feet. Where either water or sewer is not available the minimum lot area shall be fifteen thousand square feet. (Ord. No. 18, § 5-03.)

Sec. 26-43. Bench mark on permanent boundary marker.

At least one bench mark, related to U.S.C. and G.S. or other recognized datum, when such datum is available within one-half mile of the property, shall be established on one of the permanent boundary markers in every overall subdivision, and the elevation thereof shall be recorded on the final plat. (Ord. No. 18, § 5-04.)

Sec. 26-44. Public-service easements.

An easement not less than five feet wide shall be provided where necessary for public services including poles, wires, conduits, sewers, gas, water or other mains. Easements of greater width or at other locations may be required where necessary for the extension of existing services, or where several services are to be located in the same easement. (Ord. No. 18, § 5-05.)

Article IV. Improvements, etc.

DIVISION 1. IMPROVEMENTS GENERALLY.

Subdivision I. Generally.

Sec. 26-45. Installation by subdivider.

The improvements, as required in this division, shall be installed by the subdivider. (Ord. No. 18, § 5-07.)

Sec. 26-46. Roads and streets—Street construction generally.

The construction of streets shall comply with the state highway department specifications and have the approval of such department and of the department of public works of the town. (Ord. No. 18, § 5-07.)

Sec. 26-47. Same—Application of base course, etc.

All roads and streets shall be improved with a six-inch compacted base course, and prime seal asphalt coated in accordance with state highway and town specifications. This road or street construction shall conform to original approved plans as set forth in this chapter. (Ord. No. 75.)

Sec. 26-48. Sidewalks.

Sidewalks shall be installed by the subdivider wherever required to provide continuity with existing sidewalks. (Ord. No. 18, § 5-07.)

Sec. 26-49. Water supply.

Whenever it is economically feasible to provide such a supply by extension of an existing water supply system, the town council, at the request of the subdivider, will assist in securing the cooperation of the city council of the City of Newport News, Virginia, in making the same available. The technical details of construction, maintenance and operation of such extension shall comply with all technical requirements of the City of Newport News, Virginia. Side connection to all lots and adequate fire hydrants shall be installed. (Ord. No. 18, § 5-07.)

Sec. 26-50. Storm-water drainage.

Adequate drainage facility to prevent the overflow of any street, sidewalk or adjoining property by either normal or storm runoff shall be installed by the subdivider. Details of the storm water drainage system shall meet the requirements of the state highway department. The subdivider or developer shall construct all drainage facilities in compliance with the approved plan as set forth in this article. Open ditches may be permitted in lieu of underground storm sewerage, and curb and gutter, providing the open ditches are properly constructed. Open ditches shall have slope grade of at least one and one-half inches to one foot, with a minimum of two feet to each side of the ditch. The developer shall acquire the necessary rights of way and construct suitable ditches for proper drainage to a natural outlet. Such rights of way shall be properly executed in the name of the town, to permit future maintenance of these ditches. (Ord. No. 18, § 5-07; Ord. No. 75.)

Sec. 26-51. Sanitary sewerage system.

Wherever it is economically feasible to provide sanitary sewerage systems by the extension of an existing sewerage system, the town council at the request of the subdivider, will assist in securing the cooperation of the appropriate governing body or authority, in making the same available. The technical details of construction, maintenance and operation of such extension shall comply with all technical requirements of the authority concerned. Lateral sewerage connections shall be available to each lot. Where sewage is to be disposed of by means of septic tanks, drainage facilities and all construction details of the same shall be available to each lot the same shall have the approval of the health officer. (Ord. No. 18, § 5-07.)

Editor's note.—The Town of Poquoson, Virginia, lies in the area of jurisdiction of the Hampton Roads Sanitary Authority.

Sec. 26-52. Street signs.

Approved street signs shall be installed at all street intersections. (Ord. No. 18, § 5-07.)

Subdivision II. Construction Plans and Specifications.

Sec. 26-53. To be furnished to, and approved by, plat-approving authority.

Construction plans and specifications for improvements to be installed in a subdivision shall be furnished to, and approved by, the plat-approving authority in conjunction with the final plat. (Ord. No. 18, § 6-03.)

Sec. 26-54. Required plans.

The required plans, as referred to in section 26-53, shall be as follows:

(a) Road and street plans, including profiles along the centerline of each road or street, to a vertical scale of one inch equals four feet and an horizontal scale of one inch equals forty feet horizontal, showing existing and proposed grades. Where roads or streets are to be superelevated, profiles on each side shall be included.

(b) Typical cross-sections of each proposed street and sidewalk, to a horizontal scale of one inch equals eight feet and a vertical scale of one inch equals one foot.

(c) Typical plans of drainage structures and detailed plans of any structures of five feet or more.

(d) Plans and profiles of all sanitary and storm sewers or open drains to a vertical scale of one inch equals four feet and a horizontal scale of one inch equals forty feet with grades, sizes and construction indicated.

(e) Plans of the water-distribution system, showing pipe sizes, location and sizes of all laterals, valves and fire hydrants. (Ord. No. 18, § 6-03.)

DIVISION 2. REFERENCE MONUMENTS.

Sec. 26-55. Composition; location.

Reference monuments, consisting of metallic pipe or iron rod not less than one inch in diameter and twenty-four inches in length, set with tops one inch above the established grade, shall be placed at all lot corners, at each street intersection, each point of curve and point of tangent on all road curves, at each change in direction of the exterior boundaries of the subdivision and at such intermediate points on straight lines as will place them at a minimum of one thousand feet apart;

provided, however, that stone or concrete monuments, not less than four inches square and thirty inches long and set vertically with tops one inch above the established grade, shall be placed at at least two of the points above enumerated, which two points shall be clearly visible from each other. (Ord. No. 18, § 6-02.)

CHAPTER 27.

TAXATION.

Article I. In General.

§ 27-1. Exemption as to certain household goods and personal effects.
§ 27-2. Payment of taxes on motor vehicle, etc., prerequisite to licensing thereof by town.

Article II. Bank Stock.

§ 27-3. Definition of "bank".
§ 27-4. Assessment; levy and extension of tax.
§ 27-5. Tax as lien; priority.
§ 27-6. Payment into town treasury; receipt.

Article III. Admissions, etc.

Article IV. Public Utility Services.

Article I. In General.[1]

Sec. 27-1. Exemption as to certain household goods and personal effects.[2]

There is hereby exempted from taxation for each succes-

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1. For state law as to duty of council of town to make town levies, see Code of Va., § 58-844. For state law authorizing towns to make additional levies, see Code of Va., § 58-845. For state law authorizing towns to levy an additional tax to pay interest and to retire bonds, see Code of Va., § 58-846. For sate law authorizing towns to provide for collection of taxes in installments, see Code of Va., §§ 58-847 to 58-849. For state law authorizing town collector to distrain for town levies, see Code of 1950, § 58-850. For state law authorizing council of town to impose different rates of levy on different classes of property, see Code of Va., § 58-851.

For charter provision as to raising money annually for town purposes by taxes and assessments on property, see Char., art. 2, § 2.

2. For state law as to authority of town to exempt by ordinance certain classes of household goods and personal effects from taxation, see Code of Va., § 58-829.1.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

[redacted]ATKINS, et al.,)
Plaintiffs,)
) IN CHANCERY
v) 6286
)
JOSEPH E. HURD, et al.,)
Respondents.)

Deposition of Percy Smith, taken before Catherine B. Edwards, a Notary Public for the State of Virginia at Large, at the offices of Smith and Abdelnour, 1949 Route 17, Grafton, Virginia, at 11:00 a.m., May 21, 1985, to be used in the above-entitled cause.

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APPEARANCES: Smith and Abdelnour
(Mr. James H. Smith), attorneys
for the plaintiffs.

Jones, Blechman, Woltz and
Kelly (Mr. Conway H. Shield and
Ms. Robyn C. Hylton), attorneys for
Joseph E. and Annette Hurd.

Goldstein and Murov
(Mr. Ralph M. Goldstein), attorneys
for Percy Smith.

McGuire, Woods and Battle
(Mr. Stephen D. Harris), attorneys
for Peter H. and Peggy L. Carr.

Mr. Benjamin M. Hahn,
Attorney for the
City of Poquoson.

WATKINS EXH. NO. 4

Donn, Graham & Associates
REGISTERED PROFESSIONAL REPORTERS
VIRGINIA BEACH AND ACCOMAC, VIRGINIA
NORTH CAROLINA

I N D E X

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B	Letter to Mr. Goldstein from Mr. Brown, dated August 11, 1981	26

PERCY SMITH, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. SMITH:

Q Would you state your full name, your age, and occupation, please.

A Percy Smith, seventy-two years old, real estate. What was the other thing you asked me?

Q That was it. Where do you live?

A I'm living in Newport News.

Q What is your address?

A 209 Hilton Terrace.

Q Mr. Smith, you were one of the principals in Edbar Estates Corporation; is that correct?

A Yes.

Q You have heard Mr. Watkins testifying in here this morning. Did you and Mr. Watkins and Mr. Holloway discuss the layout of this subdivision plat at the time that it was proposed?

A Yes and no. He had a preliminary drawing that he brought to us. After looking at it, we felt we ought to get an engineer from our experience, the metes and bounds, all that stuff. I think it was from Portsmouth -- Norfolk, Virginia.

Q At the time that was subdivided, have you been

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involved in other subdivisions of land?

A Yes.

Q Have you been involved in any other subdivisions in Poquoson?

A No.

Q Were you familiar with the Poquoson subdivision ordinance at that time?

A No, sir.

Q Were you actively involved in the discussions and the approval process of getting this subdivision approved?

A No. Paul Holloway and Bob Watkins. Paul presented the land to us. Went down to look at it. Then met with Bob Watkins. Liked the location. Then we decided to go ahead. Lead me, and I will try to follow.

Q Referring to this fifty-foot piece of land here that is involved in this suit and all, there was no question at that time that that was put on there for development as a street, was there?

A We asked him what was the reason for that development. He said, "Let's don't talk about that." I wish he was here now. I said, "Why not?" He said that his relatives owned that land, and, "Let's lay it out there and we'll see what happens."

We were going to give him a parcel, percentage

of the development -- I think it was 5, 10 or 15 percent. I forget how much it was -- to give us the title certificate. He owned the property. He was deeding it to us so we could save the money in the development.

He did that, supposedly. And we found out we couldn't get any construction money, loan money on that.

Q Wasn't the purpose of this piece there for a street?

A It was reserved. I accepted his -- what you call -- recommendation or whatever it was. There was no issue about improving or anything like that. That was not never a question.

He mentioned something about the access, that it would be to our advantage, that we might could buy it after we developed this.

Q What about these other reserved areas at the ends of these cul-de-sacs? Did you have any input as to the design of those or the reason that those were reserved?

A The engineer laid those out, and I accepted them. There was never no discussion on it to that.

Q And the engineer drew out this fifty-foot section?

A This one here?

Q Yes.

A Yes, I think so.

Q When he drew it, he provided the arcs and [redacted] everything else for the design of the street?

A Yes. But bear in mind that he was going to have a part of it. In consideration of our doing that, he was going to be a participant in that thing.

Q He wasn't a participant in that?

A The net result was -- because he submitted his stock back -- he said, "Didn't issue any stock. I understand you are having trouble with the title." It was held up for a month or so because he couldn't give us -- what we call -- a clear title. I didn't know exactly what it was because Paul was our emissary in Poquoson.

There was another thing we took exception to this Parcel A. We never did get any clear, distinct answers or commitments as to why we were doing that and for what reason. That is as far as I can say. It was mentioned. It was brought out.

Q Did you ever plan to buy this property north of the fifty-foot right-of-way?

A He wouldn't go into it. I asked him a couple of times. He said, "Let's don't talk about that now."

Q Did you ever try to do anything about that?

A No, sir, I did not.

Q Did you ever talk to the surveyor who drew this survey for Mr. Hurd in adjusting the boundary line on

that and tell him that the property north of there was Edbar Estates' property?

A Come again on that?

Q Have you ever seen this plat here that was done?

A May I look at it closer.

Q It was done after you sold this property to the Hurds?

A Mr. Hurd? Who is Mr. Hurd?

Q This is Plat Book 9, Page 23.

A Help me on this. When was the date to Mr. Hurd?

Q Let's go back a little bit. Did you sell this fifty-foot strip that was marked "Reserved" on the original subdivision plat to Mr. and Mrs. Hurd?

A What year was that? What day?

Q This deed, dated April 20, 1983.

A Yes.

MR. GOLDSTEIN: Here is a copy of the deed. We stipulate that is the deed.

BY MR. SMITH:

Q At the time you sold that property to Mr. and Mrs. Hurd or after you sold the property to Mr. and Mrs. Hurd, did you ever see this plat, which is titled?

A The one drawn by the engineer in Williamsburg?

Q The boundary line adjustment between the properties standing in the name of Joseph E. Hurd?

A Mine was before it was recorded in the plat book.

Q Did that appear on the same plat as this?

A Yes.

Q Did you talk with the surveyor in Williamsburg about that?

A Yes.

MR. GOLDSTEIN: Which plat are you referring to? Are you talking about the plat he had drawn up or the one someone else had drawn up?

MR. SMITH: He said he had seen one like this, but not this one that was recorded.

MR. GOLDSTEIN: Maybe I can clear it up. I expect I'm entitled to ask him some questions regarding --

THE WITNESS: Let's get it cleared up before you have to make explanations.

The plat that the engineer in Williamsburg drew up and I turned over to Mr. Goldstein to look over was the one that we sold the property to Mr. Hurd. That was the plat, if that is the same one that I

signed.

BY MR. SMITH:

Q I'm just asking whether you have ever seen this plat here before.

A I don't know whether we signed that plat or not.

Q So you don't know whether you have seen this plat before or not?

A No, sir.

Q But you did have some discussions with the surveyor from Williamsburg regarding this piece of land, did you not?

A Yes.

Q Did you ever tell him that Edbar Estates owned the property north of this fifty-foot right-of-way?

A No. Do you mean adjacent to it?

MR. GOLDSTEIN: You might want to show him which piece you are talking about when you say "north of it."

BY MR. SMITH:

Q Here is the fifty-foot right-of-way shown on the subdivision plat. Did you ever discuss with the surveyor the fact that Edbar Estates owned or at one time

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owned this property here?

A No.

Q You never mentioned that to him?

A Not to my knowledge. I would have no reason to.

Q Who made the first overtures for the sale of the fifty-foot right-of-way from you and your wife to Mr. and Mrs. Hurd?

A We did.

Q You approached them?

A We were getting bills from Poquoson. I had thought that it had been reserved, whatever it was. Then we kept getting bills. I checked with counsel. I said, "Is that our land?" or whatever.

Then I was advised we had locked in to it, or whatever. They sent us bills for three or four years. I had people calling me that wanted to buy it three or four years before. I told them that we didn't know what the status was.

Q You didn't get the tax bills on it though for quite a number of years, did you?

A I can't answer that. I think it was quite a few years that we did get them.

Q After it was subdivided, for quite a few years you didn't get any tax bills, did you?

A It is hard for me to remember that, to tell the truth.

Q In fact, you had had people attempt to buy it before, and you had sought advice on whether you could sell it? You had been told that you couldn't?

A I had been told I could and I couldn't.

Q Then after you were getting these tax bills for several years, you started trying to get rid of the property?

A I said that if they are going to bill me for it, rather than have it for taxes, try to get something out of it.

Q Originally you thought it had just gone to the city, and wouldn't have been taxed?

A Yes. I have to amend that statement. I didn't know what the mechanics were, that the deed would go to the city. I never had pursued that much further. We would record a plat, and that was it.

Q Other subdivisions you have done though, Mr. Smith, when a street is designed with the arc, those types of things on it, those have gone to the city or the county?

A I have another problem like this in Deltaville. I wish you could get me clear title on it, and any one of you is hereby hired. I have an identical

one just like it, similar to it.

MR. SMITH: I don't believe I have any further questions.

EXAMINATION BY MR. GOLDSTEIN:

Q Let's go back to the time you subdivided this piece of land. Were you, at that time, interested in acquiring this other piece, the four-acre piece that Mr. Watkins talked about?

A Yes.

Q Was he going to talk to the Watkins people about buying this piece of land?

A He said he would try to do something, but don't bother it now, don't disturb it, and I didn't.

Q Was the purpose of this reserved parcel for an entrance into that piece of property if you acquired it?

A Yes, sir.

Q Did you intend to give those people, the Watkins, access at that time?

A No. He said, "Leave it like it is. Show it on the plat." I said, "Can't we talk about it? What is the story on it?" We had a problem with something up here. I don't know what it was. There was a little problem over here. He couldn't give us a clear title on the thing. He couldn't talk about that.

I respected his wishes, that he didn't want to discuss it. He said it was his relatives. That was it. Then we were getting a little bit distant because he was slow in giving us title to it. We couldn't get construction money, and so forth. So we hired another attorney to get us title, and sort of separated it.

Q You had never developed any property in Poquoson before; is that correct?

A Not that I recall.

Q Poquoson was like --

A Bought a piece of property once before, but never developed it.

Q You had mentioned the word "emissary" that somebody was your emissary in Poquoson. That was Mr. Holloway, I think, you referred to?

A Yes.

Q What was his involvement?

A He was looking out to try to make a little bit of money. He was tutoring our children.

Q Did you need to like have a local contact because you had to get approval of the people in the town?

A Yes. He was very valuable that way.

Q That is why you refer to him as "emissary"?

A Because of friendship and because of his knowledge there and because he knew everybody. He would

help expedite any work that we had to do. We thought we had that when we had Mr. Watkins.

Q There were some problems, you say, with the title. Did that involve this right-of-way he was talking about?

A He agreed to give us good, clear title. He and Holloway were working out the details. I didn't anticipate a lot of problems with both of them being native-Poquoson people.

Q Did David Blaylock end up representing you?

A Billy Milner.

Q Do you recall in the contract between R. J. Watkins and the corporation if there were any contingent fees or provisions providing right-of-way to this four-acre piece or any of the other parcels?

A No, sir. I do not recall.

Q Did Mr. Watkins have to approve the plat before he would let you subdivide this?

A I thought so.

Q Was he the town attorney then?

A I don't know.

MR. SHIELD: Did the question of Rob's approval have to do with his official position?

MR. GOLDSTEIN: I don't know who the town attorney was there.

BY MR. GOLDSTEIN:

Q Did he reserve in the contract -- was there any provision he had to approve the contract or the subdivision plat before it was recorded?

A I honestly can't remember.

Q He did look at it after this plat was prepared?

A He was shown the plat.

Q He also had to join in the plat somewhere because of the Parcel B and Parcel A that he retained?

A Could be. I don't recall. By that time I guess we turned it over to Milner, to them, and they were handling the details.

Q You were getting tax bills from the City of Poquoson on this parcel, is that correct --

A Right.

Q -- marked "Reserved"?

A Right.

Q That was when you came to my office and asked me to find out what the status of it was?

A Right.

Q And you recall that letters were written to the -- I guess it was -- the City of Poquoson by that time or to their attorney regarding this matter?

A Yes.

Q Do you remember getting back from me a copy of a letter regarding the city attorney's opinion as to what you could do with that property?

A Right.

Q And the conclusion was that you could sell the property?

A Right.

Q And that is when you went out to the people who own Lot 31, I believe, the Hurds, and you talked to them about selling the property?

A Yeah.

Q And a deal was finally struck; is that correct?

A Yes.

Q And the corporation had long since been dissolved; is that correct?

A Yes.

Q You and your wife were the last directors of the corporation?

A Right.

Q That is why the deed was prepared in the manner that is shown on the record?

A Yes.

Q This is the plat that was drawn up at one time showing the division of the reserved parcel; is that

correct?

A Yes.

Q There is no mention of who owns the property to the north?

A No.

Q Which would be the Watkins' piece?

A Right.

Q It only referred to Lot 31, Lot 32 and Sir Ralph Lane; is that correct?

A Right.

Q This other subdivision plat, this is a plat that is recorded in Plat Book 9 at Page 623, which is a boundary line adjustment between the Hurds and Mr. and Mrs. Carr? Mr. and Mrs. Carr -- and someone can correct me -- own Lot 32; is that correct?

A Never contacted those people though.

Q The Hurds own Lot 31. This was a subdivision plat that was prepared in June of 1983 or a replat of their particular lot showing how they divided up the fifty-foot parcel; is that correct?

MR. GOLDSTEIN: Gentlemen, is that correct?

MR. SMITH: Yes.

MR. HAHN: Yes.

BY MR. GOLDSTEIN:

Q It looks like the Carrs ended up with -- I can't tell how many feet it is. It looks like they got about a fourth or a third of the reserve parcel, and the remainder of it stayed with the Hurds.

Have you ever seen this plat?

A No. I don't think I have seen that. That is not the one that we conveyed, is it? No.

Q Up at the top, there is referred to "Now or Formerly Edbar Estates Corporation." That is marked on the piece of property on the Watkins' parcel. I'm not sure if these are arrows or what these are.

A You said something about Edbar Corporation, which was what?

Q Written on this plat -- and it is not too clear on this copy -- it says, "Now or Formerly Edbar Estates Corporation." There are some lines that look like arrows coming out from it.

A That is not correct.

Q Did you direct whoever drew this plat to put that on there?

A No. Our plat is different, isn't it?

Q This is the plat that Mr. Spearman prepared for you?

A Yeah, that's right. I think that is what

I told him by.

Q This piece -- and this identification on it --

A I have no identification to represent we owned that.

Q As a matter of fact, the assistant city manager for the City of Poquoson told you in some of the correspondence that the property could be sold to Lot 31 -- or whoever owned Lot 31 -- or Lot 32 or the people who owned to the north, you could sell it to anyone you wanted to, is that correct, this piece, the reserve piece?

A The land which I thought we owned.

Q Did any of the correspondence or copies of correspondence that was directed to me from the City of Poquoson or the --

MR. SMITH: Can we go off the record.

(Discussion off the record.)

BY MR. GOLDSTEIN:

Q Do you remember getting copies of letters I sent to you from -- one was back in April of 1981 -- from Jonathan S. Gibson, III, attorney for the City of Poquoson, regarding this piece of property?

A Yes.

Q And the letter mentioned the replatting of the property and the fact you could sell the property to

anyone else that you wanted to?

A Right.

Q But he mentioned that you couldn't build a house on it?

A Right.

Q Then a similar letter from the City of Poquoson, Mr. Charles R. Brown, a letter dated August 11, 1981, regarding the plat, that at one time we were going to try to use to convey this parcel of land? Do you remember getting copies of those letters?

A Right.

Q It was on that basis, the information you had from the city and their attorney, that you proceeded to sell this piece of land marked "Reserved"?

A Right.

Q You had been taxed on the property for a number of years?

A Yes.

Q The city told you you were responsible for taxes going back for ten years?

A For ten years.

Q Originally you were interested in acquiring this four-acre piece from the Watkins family?

A Yes.

Q Who you knew were relatives of Robert Watkins?

Did you know that?

[redacted] Yes. He mentioned it, yes. He said, "To the moment."

Q Did you anticipate coming back before you were out of that subdivision and acquiring that parcel?

A Hoped to, but it didn't work out that way.

MR. GOLDSTEIN: Those are all of the questions I have. Now you have to answer everyone else.

EXAMINATION BY MR. HAHN:

Q Mr. Smith, I'm somewhat confused by the relationship of Mr. Robert Watkins with Edbar during the development of this. He was supposed to get five percent of the profit from selling the lot, you say?

A He was supposed to get five, ten or fifteen percent of the stock.

Q In Edbar?

A In Edbar. We thought he would be an officer of the corporation, and he would be diligent, proper and protect the corporation, guide it correct so we would have little or no problem.

When the time came to finish, to let out contracts to borrow money, we were advised by our bank, our lender, that the title papers were not in order.

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I didn't pursue it too much. I just promptly called him up, went to another attorney and told him to take it over.

Q Was Edbar Associates formed to develop this subdivision alone, and would form other entities to develop other properties?

A Yes, sir.

Q In response to a question, you stated earlier that you were somewhat surprised to get these tax bills sometime later, after you all had finished the development and were clean out of it.

A Yes, we were.

Q So it was your understanding at that time that the property had been dedicated to the city?

A Yes.

Q No construction was ever done on that road, however; is that true?

A Not that I know of.

Q It would have been the responsibility of your corporation to have paved it, would it not?

A It all depends on what they require you to do. When you sit down with the city authorities in different places, they do certain things and you do certain things.

MR. HAHN: Those are all of the questions I have at this time.

EXAMINATION BY MR. SHIELD:

Q Mr. Smith, let me ask you just a couple of questions.

I'm trying to establish exactly what contingencies Robert Watkins, the gentleman that testified before you, put on your group in order to develop this property. Did he say to you that you had to give an access to that four-acre piece behind the reserved parcel we are talking about today?

A I couldn't say yes and I couldn't say no. It has been so long.

Q What you have said is that he said, "Let's don't talk about it now"?

A Yeah.

Q Did he have --

A I asked him about the land, "Is that going to be a part of our development?" He said there were relatives of his and, "Let's don't talk about it now, but show it on the plat."

Q As I understand your testimony, you, at your initiative, wanted to reserve this fifty-foot parcel in order to have an access if you developed the piece behind it?

A Not on my initiative. He requested it. It was the logical thing to do, if we were going to

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negotiate for the land, that access should be provided.

I guess my question is: Who is the [redacted] was going to negotiate for that four-acre parcel?

A At that time, he was going to be a member of the corporation.

Q So, at that time, you contemplated his being a part of Edbar? You were talking about getting that four-acre tract into the development at a later time; is that correct?

A Right.

Q That is why the fifty-foot reservation was there?

A Right. Probably unimproved because we couldn't consummate anything with the people. He wouldn't do it.

Q Did Billy Milner, the attorney who ultimately took over this, have any negotiations with Mr. Watkins concerning that fifty-foot reservation?

A I don't know. I think it was a little strange at the time. He just took the papers, I guess, recorded the plat, whatever. Bob had not come through with us for things we had wanted.

We like to get in and get out. Frankly, it cost about ninety days of rain, straight rain, because of

the delay by missing one week's work. It was the worst one we had.

MR. SHIELD: I don't have any other questions.

EXAMINATION BY MR. HARRIS:

Q Other than the reservation on the subdivision plat, was there any other document or written memorandum or agreement between you and Mr. Rob Watkins or anybody else to pen down precisely what this reservation was for?

A Not that I know of. It was a temporary thing to satisfy -- if negotiations could be consummated, we would go ahead and pursue, try to buy Watkins' land.

We saw no reason to put out money for the improvements, and so forth, if we didn't have this stuff there. Apparently it was satisfactory with the city.

Q Did anybody ever tell you you were going to have to put a street in there?

A No, sir.

Q Do you recall Mr. Watkins ever telling you that you were going to have to put one in?

A No, sir.

Q Do you recall any discussion about this property being landlocked back there?

A No.

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Q You know what landlocked property is? You [redacted] buying and selling property for a long time.

A I know what landlocked is.

Q Do I understand that you put this subdivision to record, developed the subdivision, sold it --

A We sold the lots. These people apparently didn't think because they built too close to the street.

Q You sold the lots off?

A Yes, sir.

Q There wasn't anything left to be sold, and then you realized you were getting a tax bill on this [redacted] piece of property?

A That's it.

Q When you got a tax bill on the piece of property, you said, I'm going to see if I can sell it?

A I'm going to find out what it's all about.

Q Because if it is going to get sold, I would just as soon sell it as to have the tax people sell it?

A Yes.

Q That is when you got ahold of Mr. Goldstein, to ask him to look into it for you?

A Yes.

Q That is when he wrote Mr. Gibson, who is the city attorney in Poquoson?

A Yes.

Q When you learned from Mr. Gibson you could sell it, that is when you went to Mr. Hurd and struck a deal with Mr. Hurd?

A Right.

Q You sold him the parcel for $10,000?

A Right. I think that is what it was.

MR. HARRIS: I don't think I have any other questions.

MR. SHIELD: Could we at least identify the two letters that Ralph showed you.

MR. GOLDSTEIN: I think I dated them and said who they were from. It is all right with me if he wants to identify these. Maybe we can make copies of these.

Can we mark the April 2nd, 1981, letter as Exhibit A and the August 11, 1981, letter as Exhibit B.

(So marked by the court reporter.)

EXAMINATION BY MR. SMITH:

Q Mr. Smith, you say that you testified just a minute ago that at the time that this piece of property was subdivided and that the fifty-foot reserve strip was put in there that you thought it was just something temporary?

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A Yes.

[redacted] What were you going to do with that?

I don't know. We were busy engineering at the time. You asked a good question, "What were we going to do with it?" You can always find something. You could sell part to one fellow and to another.

Q That isn't what the intent was at the time? Weren't engineers working with the city officials in order to get --

A Didn't have much supervision down at Poquoson at that time.

Q They did have a subdivision ordinance, did they not? You didn't start doing anything with this piece until about 1977-78, when you started receiving tax bills?

A That's right.

MR. SMITH: I don't think I have anything more.

THE WITNESS: I wanted to sell it four or five years before, six years. We had phone calls from people. I would pick up the phone and say -- some lawyer would say, "You can't sell it or whatever." One of my attorneys I was using at the time would say, "No, don't think you could."

BY MR. SMITH:

[redacted] You just kept checking until you got the [redacted] that said you could?

MR. GOLDSTEIN: He got the city attorney to tell him he could.

MR. SMITH: The city attorney said, "He imagined he could."

I don't have any other questions.

MR. SHIELD: I don't have any other questions.

MR. GOLDSTEIN: You have the right to read over your deposition to see if she transcribed [redacted] everything the way you said it. If you don't want to do that, you can just waive your right.

THE WITNESS: Whatever you recommend.

MR. GOLDSTEIN: That is your deposition if you want to read it over. You can waive it.

THE WITNESS: There is no harm in reading it.

-----oOo-----

I have read the foregoing deposition, and the same is true and correct.

Deponent

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REPORTER'S CERTIFICATE

[redacted]IRGINIA,

CITY OF GRAFTON, to-wit:

I, Catherine B. Edwards, a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of Percy Smith was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 12th day of August, 1985.

Catherine B. Edwards
Notary Public

-----oOo-----

Exhibit A
CE 5/21/85

MASON, GIBSON, COWARDIN AND SPENCER

ATTORNEYS AT LAW

693 J. CLYDE MORRIS BOULEVARD

NEWPORT NEWS, VIRGINIA 23601

SHANNON T. MASON, JR.
JONATHAN S. GIBSON, III
WILLIAM C. COWARDIN, JR.
WAYNE R. SPENCER
ALLEN C. TANNER, JR.

AREA CODE
(804)
595-7275

April 2, 1981

RECEIVED

APR - 7 1981

GOLDSTEIN & MURON

Mr. Ralph M. Goldstein
Attorney at Law
P. O. Box 2201
Newport News, Virginia 23602

Re: Edbar Estates Corporation/Percy Smith
Area shown as reserved on plat of
Holloway Forrest Subdivision, between
Lots 31 and 32, off of Sir Ralph Lane

Dear Ralph:

I have examined the plat of Holloway Forrest.

I make reference to Sec. 15.1-478 of the Code of Virginia, 1950, as amended. The last sentence in the first paragraph of that section reads, "but nothing contained in this article shall effect any right of a subdivider of land heretofore validly reserved."

It would appear from the history of this subdivision that the developer validly reserved unto himself this portion of land. I would point out that this is not a lot and cannot be built upon. The portion of land referred to does not meet any standards under the zoning or subdivision ordinance which would permit construction upon the same. However, the developer could sell a portion of this land or all of the same to the owners of Lots 31 or 32. I would imagine he could sell it to anyone else, but nothing could be constructed upon the same.

Mr. Smith is also liable for taxes on this portion of property for a period extending back at least 10 years. I am sending a copy of this letter to the Commissioner of Revenue and the City Manager so they may have reference to the same.

I would suggest that any conveyance of this piece of property be done by re-plat, with the City Manager signing such plat in order that the question of title can be clarified for future reference. I would suggest that you contact the Commissioner of Revenue in order to clarify the issue of back taxes due and owing.

The re-plating of the property with the signature of the City Manager and the clarification of the back taxes is necessary to clear title in this matter.

If I can be of further assistance, please communicate with me.

Very truly yours,

Jonathan S. Gibson, III

JSG,III:met

cc: Charlie Brown, Asst. City Manager
John Dressler, Commissioner of Revenue

Exhibit B
CE 5/21/85

CITY OF POQUOSON
830 Poquoson Avenue
Poquoson, Virginia 23662
(804) 868-7151

OFFICE OF THE CITY MANAGER

August 11, 1981

Mr. Ralph M. Goldstein
Attorney at Law
14801 Warwick Boulevard
Newport News, Virginia 23602

RE: Edbar Estates Corporation
Holloway Forrest
Poquoson, Virginia

Dear Mr. Goldstein:

As per our discussion on Friday, August 7, 1981, I have reviewed the City's subdivision ordinance and how best to address your request to additionally subdivide that parcel of property standing in the name of Mr. Percy Smith as President of Edbar Estates Corporation.

The plat you have presented the City is in essence a subdivision of a parcel that appears to have been intended to be access to property located to the north of the Holloway Forrest Subdivision. As the City Attorney mentioned in his letter of April 2, 1981, the request for a replat of that strip was so that if the adjacent property owners purchased their respective 25 feet of the 50 foot strip it would then show as one contiguous part of either lot 31 or lot 32. What you have accomplished in this plat is to just subdivide one 50 foot parcel into two 25 foot strips. That in fact violates the City's subdivision ordinance as neither lot would be available for any building whatsoever.

If the adjacent property owners of lot 31 and lot 32 do not wish to purchase their respective share of that strip of land, possibly the owners of the parcel to the north might be interested.

If I might be of any additional assistance, please do not hesitate to call.

Sincerely yours,

292 C R Brown

Charles R. Brown
Assistant City Manager

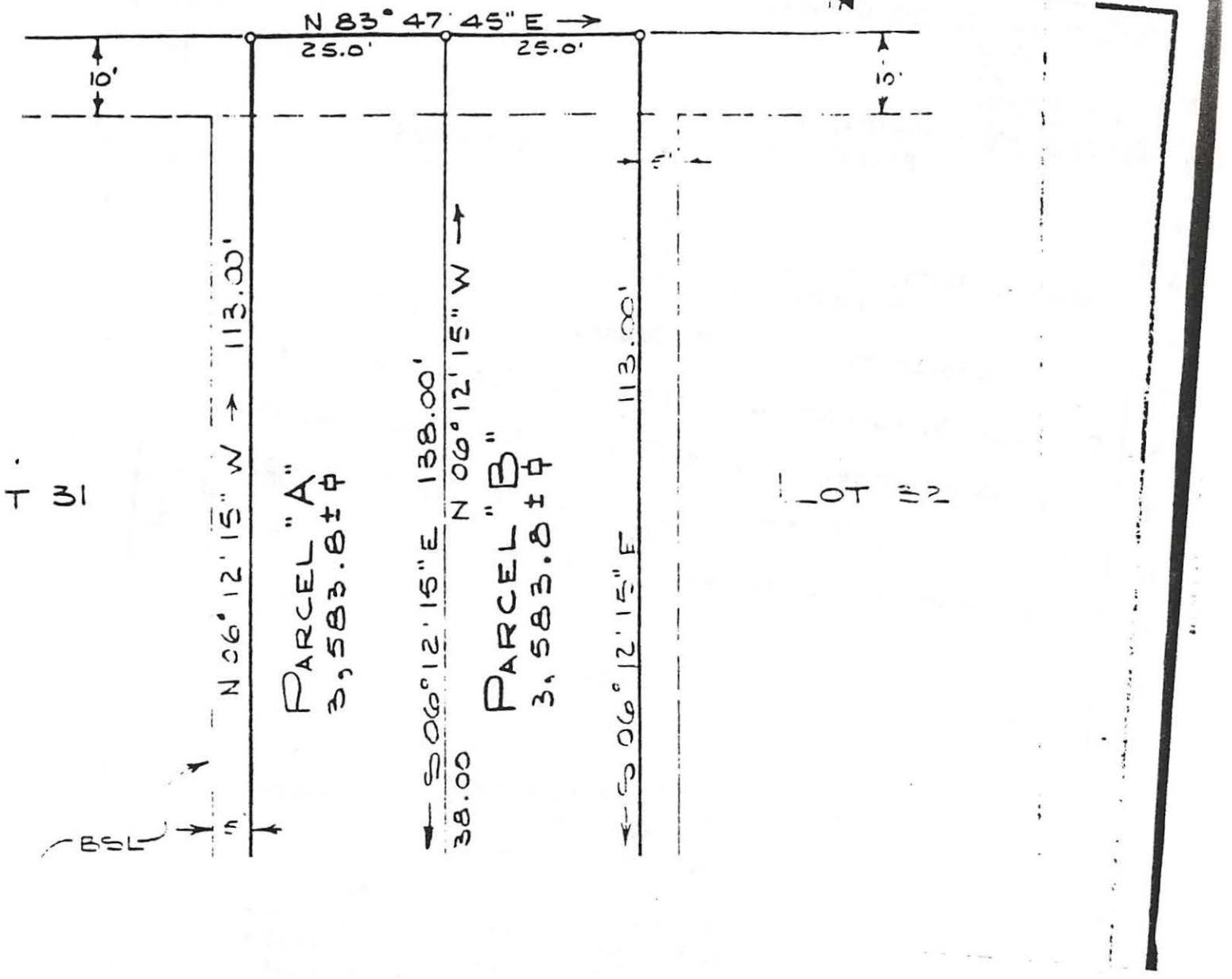
CRB:jfw

...AT BE APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH EXISTING SUBDIVISION REGULATIONS AND MAY BE TO RECORD.

Exhibit C
CE 5/21/85

DATE: _____

AGENT OF GOVERNING BODY



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

BENJAMIN W. WATKINS, et al,)
Plaintiffs,)
) IN CHANCERY
v) 6286
)
JOSEPH E. HURD, et al,)
Respondents.)

Deposition of John H. Dressler, taken before Catherine B. Edwards, a Notary Public for the State of Virginia at Large, at the offices of Smith and Abdelnour, 1949 Route 17, Grafton, Virginia, at 12:45 p.m., May 21, 1985, to be used in the above-entitled cause.

-----o0o-----

APPEARANCES: Smith and Abdelnour
(Mr. James H. Smith), attorneys
for the plaintiffs.

Jones, Blechman, Woltz and
Kelly (Mr. Conway H. Shield and
Ms. Robyn C. Hylton), attorneys
for Joseph E. and Annette Hurd.

Goldstein and Murov
(Mr. Ralph M. Goldstein), attorneys
for Percy Smith.

McGuire, Woods and Battle
(Mr. Stephen D. Harris), attorneys
for Peter H. and Peggy L. Carr.

Mr. Benjamin M. Hahn,
Attorney for the
City of Poquoson.

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JOHN H. DRESSLER, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. SMITH:

Q John, would you state your full name, occupation, and your current address.

A John H. Dressler, Commissioner of Revenue for the City of Poquoson; 8 Carroll Drive, Poquoson.

Q How long have you been Commissioner of Revenue for the City of Poquoson?

A Since February 1, 1977.

Q You are familiar with the fifty-foot reserve strip in Holloway Forrest that is the subject of this litigation here today?

A Right.

Q Why don't you just tell us what you know about it from your standpoint as far as Commissioner of Revenue?

A I don't recall exactly how it came up. One day, when going through the plat for Holloway Forrest, I found this parcel that said, "Reserved." So I looked. I couldn't find reserved for who. There wasn't any statement on the plat.

So I looked. There were two other places

marked, "Reserved," as I recall, on the cul-de-sac on the plat. I could understand those because there was a note on the plat that had dotted lines that said, "This section reverts to the owner of this lot if and when the street goes through there." There was no mention about the fifty-foot reserved strip.

I said, well, the state code requires me to have every piece of property on the tax books, either tax exempt or taxable.

Since in all my dealings I try to use recordations or recorded documents as the basis for any action I take, I went to look for anything that would say who this parcel belonged to. I couldn't find nothing except that it was part of the plat of the subdivision.

So, to my logic, that said that the plat belonged, therefore, to the owner of the parcel of the property that the subdivision was created out of, which is Edbar Estates. I said, therefore, the ownership, as far as I was concerned, legal ownership rested with Edbar Estates.

So I wrote a letter to Edbar Estates in care of Percy Smith, and told him that due to my finding that the code required me to put every piece of omitted land on the tax books, and that I was putting it on -- I think I said -- the first of July, which would have been the beginning of

July which would have been the second half of the year.

I got a value from the assessor for that piece of property. I told him what the taxes would be. If he had any questions, to call me.

I proceeded to put it on the tax books under Edbar Estates.

Q Do you remember when that was?

A I think my letter that I sent to Mr. Smith was around June -- I got it in here if you want to see it -- June of 1977. Here is a copy of the enclosure. It is just a copy of the plat.

MS. HYLTON: May I see that letter.

BY MR. SMITH:

Q That was 1977?

A Right.

Q Did you have any conversations with Mr. Smith after that?

A I had nothing.

Q Did you have any conversations with anyone else outside of the city government with regard to this piece of property?

A No, sir. As I say, I used, as a basis for my tax work, any recorded documents. I could find none that changed my opinion as to who the ownership at that

point in time was to that parcel.

Q But you didn't put the other two reserved areas at the end of the cul-de-sac?

A No, sir. The value would have been practically nil for the area.

There was the note that shows the dotted lines, the part of the cul-de-sac reverted to the owner of the parcel.

Q The reserved area doesn't go to those dotted lines --

A There is a note down on the plat that says those dotted lines revert to the owners. This particular parcel, I felt, had value, monetary value; and, therefore, should be on the tax rolls.

MR. SMITH: Answer any questions Mr. Goldstein may have.

EXAMINATION BY MR. GOLDSTEIN:

Q Is it your office that has the tax maps, and that sort of thing?

A Yes.

Q Sometimes the real estate assessor's office in the City of Poquoson, your office has all of those tax maps?

A Yes.

Q Your office would also have the property that was to the north of this piece, this four acres?

A Would be on the map just like subdivisions are on the map.

Q You don't happen to have that plat in your pocket, do you, that shows that?

A No.

Q There is a plat in your office that shows this Watkins' four-acre parcel to the north of this fifty-foot reserved piece?

A My map shows a parcel on there. I have no plat of that particular parcel.

Q But it is drawn in on the tax map for whatever it is worth? It may not be accurate?

A It is not engineeringly accurate. It is put there to show the approximate location of each parcel.

Q You don't recall ever looking at that particular tax map to see what was on that piece to the north?

A No. I have looked at the tax map and saw that parcel.

Q But never tied it in to this reserve piece or anything like that?

A No. Like I say, my only point -- the whole point of my saying there was to who owns that particular

parcel.

Q Your job was to increase the parcels that were in the city that were not on the tax rolls at that time?

A Part of the code that requires me to put any omitted lands that I find on the tax rolls.

Q You saw no reason why you shouldn't include this on the tax rolls?

A That's right. As I said, the only ownership I could deduct was by Edbar Estates.

Q Did you do this voluntarily?

A I didn't have any information from the city. I'm a constitutional officer.

Q How long have you been in that position?

A From February 1st until --

Q Of '77?

A Yes.

MR. GOLDSTEIN: Those are all of the questions I have.

EXAMINATION BY MR. HAHN:

Q Mr. Dressler, you stated you relied on the recorded documents as much as possible.

A Plats, deeds.

Q When a surveyor submits a plat to your office,

you don't go behind it as a regular routine to check whether what he is showing you is correct?

A The surveyor doesn't give any plats to my office.

Q When it comes through --

A I either get it, find out about it in the recordation at the courthouse or the administrative section of the city. Right now the city planner will send me a copy down after it has been approved.

Q Do you rely on what the surveyor shows on the plat?

A Yes, sir.

MR. HAHN: Those are all of the questions I have.

THE WITNESS: Excuse me. I don't do it unless that plat is recorded. There are a lot of times when there have been changes by the time the plat has been made and actually recorded. I usually base it on a recorded plat or recorded deed.

EXAMINATION BY MS. HYLTON:

Q Mr. Dressler, do you ordinarily rely solely on yourself and your own expertise to determine the ownership of land?

A Yes, based on evaluating the deeds, the plats

and the records.

Q If you have any questions, do you ever go to anyone else to ask them the questions about it?

A No, ma'am. It is pretty clear in the deed who the owner is, who the grantor and grantees are. I read every deed.

Q When you looked at that particular plat, did you have any questions in your mind that it belonged to Edbar Estates?

A The plat of the subdivision? No question in my mind it belonged to Edbar because they developed and made the whole subdivision. They owned everything that was there.

Q Did you rely on anything else except for that subdivision plat?

A No. There was no deed or anything else to look at.

Q How long have you been in the business of doing this?

A 1977.

MS. HYLTON: No further questions.

MR. HARRIS: No questions.

MR. SMITH: She is going to type these up. You have the right to go and read them or you can waive your signature to them.

THE WITNESS: I waive.

-----oOo-----

REPORTER'S CERTIFICATE

STATE OF VIRGINIA,

CITY OF GRAFTON, to-wit:

I, Catherine B. Edwards, a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of John H. Dressler was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 12th day of August, 1985.

Catherine B. Edwards
Notary Public

-----oOo-----

FORM SEL-225 REPORTERS PAPER & MFG. CO 800-626-6313

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

[redacted] W. WATKINS, et al,)
Plaintiffs,)
) IN CHANCERY
v) 6286
)
JOSEPH E. HURD, et al,)
Respondents.)

Deposition of Roger D. Spearman, taken before Catherine B. Edwards, a Notary Public for the State of Virginia at Large, at the offices of Smith and Abdelnour, 1949 Route 17, Grafton, Virginia, at 11:45 a.m., May 21, 1985, to be used in the above-entitled cause.

-----oOo-----

APPEARANCES: Smith and Abdelnour
(Mr. James H. Smith), attorneys
for the plaintiffs.

Jones, Blechman, Woltz and
Kelly (Mr. Conway H. Shield and
Ms. Robyn C. Hylton), attorneys
for Joseph E. and Annette Hurd.

Goldstein and Murov
(Mr. Ralph M. Goldstein), attorneys
for Percy Smith.

McGuire, Woods and Battle
(Mr. Stephen D. Harris), attorneys
for Peter H. and Peggy L. Carr.

Mr. Benjamin M. Hahn,
Attorney for the
City of Poquoson.

Donn, Graham & Associates
REGISTERED PROFESSIONAL REPORTERS
VIRGINIA BEACH AND ACCOMAC, VIRGINIA
ELIZABETH CITY, NORTH CAROLINA

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FORM SEL-225 REPORTERS PAPER & MFG CO 800-624-9313

ROGER D. SPEARMAN, called as a witness, having been duly sworn, was examined and testified as follows:

EXAMINATION BY MR. SMITH:

Q Would you state your name and occupation and residence, please.

A Roger D. Spearman. I'm a professional land surveyor. I live at 115 Pineport Road in James City County.

Q Let me ask you: In approximately 1981, did you do some work for Mr. Percy Smith, representing Edbar Estates Corporation, on some property in Holloway Forrest?

A Yes, I did.

Q Can you tell us what you recall about that whole transaction in your dealings with Mr. Smith at that time?

A At the time, the extent of our involvement was to merely plat a right-of-way that had been platted on the Holloway Estates' plat of record to show it was a separate piece of land other than a lot in Holloway Forrest.

Q Do I understand you to say that originally all you were to do was to draw a boundary survey of that particular strip?

A Of that strip of land between Sir Ralph Lane and the piece of property to the north of it, I think.

I responded to a letter from Ralph Goldstein, dated June 22, 1981, which had accompanying it a letter from Mr. Jonathan Gibson, III, the Poquoson City Attorney. They wanted to replat the right-of-way with the idea at a later time of possibly subdividing it for sale to a separate party or as a whole to a separate party.

Q Now this drawing here that Mr. Goldstein has which is entitled, "Plat of property standing in the name of Edbar Estates Corporation," dated June 25, 1981, did you draw that plat?

A This was drawn subsequent to our first contact where we split it down the middle, yes.

Q Now that plat doesn't show anything to the north of that property as far as who the owners of the property were? From your records and your file, do you have any indication in there as far as who were the owners of the property to the north of this parcel?

A Not per this plat. It does not show that. Of course, anything I had to go on this particular plat was the plat of record of Holloway Forrest, which I used in Plat Book 7, Page 119. That also does not show adjacent ownership.

Q Let me show you this plat, which is entitled,

"Boundary line adjustment between the properties of Hurd and Carr," recorded in Plat Book 9, Page 623.

Did you prepare that boundary line adjustment plat?

A Yes, I did.

Q On that plat -- this copy isn't very good -- it says that north of this particular piece that is involved in this suit it is written in there, "Now or Formerly Edbar Estates Corporation."

A Yes.

Q Do you know where you got that information from?

A Let me check my files. I don't recall right offhand.

I don't show any notes in my files as to where they came from, so I can't testify for a fact.

Q You don't have any recollection?

A No, I don't have any.

Q The reason I asked the question is that the property is in the name of Watkins and always has been in the name of Watkins. We are trying to find out where that information came from.

A I can't honestly say.

MR. HARRIS: Do you have any recollection of Percy Smith or Mr. Goldstein or anybody, in effect, your client telling you that?

THE WITNESS: Well, we did, because of the location of the property, rely on correspondence from Mr. Goldstein and telephone conversations with Mr. Smith.

I don't recall specifically -- it is possible, but I can't specifically say that in several phone conversations with Mr. Smith that he did say that.

MR. HARRIS: I'm not saying he did. You have looked through your notes.

THE WITNESS: I don't have any indication of where it came from in my notes. I would have to assume -- without any real recollection of it -- that it came to me from my clients.

MR. HARRIS: You don't have any independent recollection? You are kind of assuming that?

THE WITNESS: Yes, sir.

MR. GOLDSTEIN: Are we going to ask questions out of turn?

MR. HARRIS: I'm just trying to get --

MR. GOLDSTEIN: I would like to jump in.

BY MR. SMITH:

Q This boundary line adjustment survey was done pursuant to the City of Poquoson's boundary line adjustment ordinance or portion of their subdivision ordinance?

A To the best of my knowledge. I certify to the best of my knowledge it is in compliance with the ordinance, yes.

Q Have you done other boundary line adjustment surveys for property in the City of Poquoson?

A Not in the City of Poquoson, no.

Q From your recollection, after you prepared this did you present it to the city manager for signature?

A No, I did not.

Q What did you do with it?

A I supplied the copies to my client at that time, who was Colonel Hurd. I think it was Colonel Hurd. Joseph Hurd was the client at the time.

Q When you provided those, they did not have the approval signatures on them; is that correct?

A No. They strictly had blank prints. I don't recall whether I supplied them with a mylar for recordation or not.

Q This boundary line adjustment plat was done in June of 1983; is that correct? The work was ordered June 21 of 1983; right? That was two years after you had originally done work for Mr. Smith on this property?

A Yes.

Q So to the best of your knowledge, you have no idea who presented the plat to the city manager for

approval?

A No, I do not.

MR. SMITH: Answer any questions of Mr. Goldstein first.

EXAMINATION BY MR. GOLDSTEIN:

Q I was looking in your file there. I didn't mean to be nosy. I thought I saw another plat that had, "Now or Formerly Edbar Estates," written on top of it. Is that this one?

A No. That is a plat done for the Hurds to show the physical improvements on or close to the property. That is a xeroxed copy of that.

Q This was done on March 14, 1983, and shows, "N or F Edbar Estates Corporation." This is not the plat you did for Mr. Smith?

A No.

Q You did a plat for him a couple years earlier, in 1981; is that correct?

A Yes.

Q Did you ever furnish a plat to Mr. Smith that showed, "Now or Formerly Edbar Estates Corporation," to the north of the fifty-foot reserve parcel?

A No. That is a modification of the original plat or revision of the original plat, if you recall, that

has an approval signature at the top of it and does not show any owner at that point.

Q Originally when asked the question as to where you got that information to draw the plat, you said you went to the old subdivision plat of Holloway Forrest; is that correct?

A Yes.

Q You pulled the folded-up file or the folded-up plat from your file and looked at it and said, "It doesn't have any designation on there;" is that correct?

A As to the adjacent owner.

Q The piece on the north?

A That's true.

Q Then you looked in your file for any other notes or field notes that you had regarding where you got that information from. You don't have anything in your file that indicate where you got that from?

A That's true.

Q Then in response to a question from Mr. Smith, you said that it might have come from conversations with me or from Mr. Smith; is that correct?

A That is true.

Q Do you recall any conversations with me where I told you that Edbar Estates owned the property to the north?

A Not specifically, no.

Q When did you speak with Mr. Smith about this property?

A I don't have any phone loggings with me from four years ago.

There were, to the best of my recollection, three, possibly four, phone conversations with Mr. Smith during this period. I'm trying to recall whether or not they were subsequent to your letter. I'm positive of that. The exact content of those calls, I can't recall.

Q What is the usual source of information regarding where you do a plat and you put, "Now or Formerly" so and so? Where do you get that information from?

A Generally tax records and previous surveys. If the adjacent property is called on a previous survey, it is generally carried forward -- for just identification purposes -- from the tax map just as a location method as to where the property is.

Q Your plat that was given to Mr. Smith when he was -- this was the only plat you ever did for Mr. Smith; is that correct?

A Yes.

Q I guess I would like to have this copied and marked as an exhibit. This is a plat that is dated June 25, 1981, I believe, that is. Is that correct?

A June 25, 1981.

Q It refers to Plat Book 7, Page 119 as a reference?

A Right.

Q This plat does not have, "Now or Formerly Edbar Estates Corporation"?

A No, it does not.

Q This is the only plat that you ever did for Mr. Smith?

A Yes.

MR. GOLDSTEIN: Would you mark that as Exhibit C.

(So marked by the court reporter.)

BY MR. GOLDSTEIN:

Q The plat that you have given me a copy of, which is dated March 14, 1983 -- is that correct?

A Yes.

Q -- this has the designation at the top of, "N or F Edbar Estates Corporation" as the property to the north of this parcel?

A Now or Formerly, yes.

MR. GOLDSTEIN: Mark this as Exhibit D.

(So marked by the court reporter.)

BY MR. GOLDSTEIN:

Q You prepared this plat for Mr. Hurd?

A Yes.

Q He was your client at the time?

A Yes.

Q Both of the plats, C and D, have reference to a field book F?

A It is, "The notes are in the file."

Q Okay. That is the file that you have looked in?

A Yes.

Q That is the one you have with you.

The letter you received from me, with a copy of Jonathan Gibson's letter of April 2, 1981, that would not make any reference to who owned the property to the north?

A No.

Q The reason we contacted you was for the purpose of drawing up this first plat, Exhibit C, so that Mr. Smith could use this in dealing with Mr. Hurd over on this side or perhaps the owner of Lot 32? Was that your understanding?

A "The purpose"?

Q Based on your conversations.

A Right. Was to be able to sell that as a separate piece of property.

Q After you drew this plat for Mr. Smith, you

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didn't have any other contact with anyone regarding this property until Mr. Hurd was your next contact regarding the property?

A Yes.

MR. GOLDSTEIN: Those are all of the questions I have.

EXAMINATION BY MR. HAHN:

Q How did Mr. Hurd come about to use you as a surveyor in this matter on the second plat, which is the March 14 plat?

A He contacted me by phone. I subsequently followed up that conversation with a letter. Possibly he had seen or got my name when my people were down there. They wouldn't necessarily have been on the grounds. I don't know.

Q Do you remember Mr. Smith referring him to you or anything?

A He might have said that in the phone conversation.

Q Am I correct in assuming you did no research in the land records on this other than to take these plats from the plat of Holloway Forrest that was recorded, the subdivision plat?

A That's true.

Q And you don't know how you came about to know that there was Edbar Estates Corporation to the north of Holloway Forrest?

A Anything I said would be an assumption on my part at this point.

Q Does your file reflect any of your personnel or associates who did work on this project or did you do it entirely on your own?

A My people were in the field and at the courthouse on the way down. The notes -- unless they made them on something other than the file -- are not here.

Q You wouldn't, at this point, know who worked on this project in your office?

A With time sheets I can find out.

Q You can trace it back?

A Yes. And the phone conversations are all in a log, as well. Not the content necessarily.

Q So if you did no title work, so to speak, your information as to ownership of that property to the north would have had to come from one of your conversations over the phone; is that correct?

A I would assume so, yes.

Q When you are certifying a plat for recordation -- particularly for the city to utilize -- would that be your normal mode of operation, to rely on what someone told

you as to whose ownership is adjoining the plat?

A In view of the lack of adjacent ownership being shown on the subdivision plat -- the plat does not involve the adjacent piece of property in its intent.

In view of the original subdivision plat neglecting to show adjacent ownership or imply adjacent ownership, then parol evidence would be a valid means of showing that.

It is not the purpose of any of these plats to show adjacent ownership. The purpose of the plat is to show intent for the use of that strip of land between Lots 32 and 31 in Holloway Forrest.

Q Was it evident to you when you were drawing up the plat that that was a fifty-foot right-of-way shown on the plat of Holloway Forrest?

A The configuration of the land showing fill it curves adjoining Sir Ralph Lane is a common way of showing intent to use the strip of land for ingress and egress, and is also required by most municipalities, as well as the state highway department for right-of-way.

Q Given the fact of its apparent use as a right-of-way, wouldn't it seem to you that it would be important to the governmental body knowing whose land that was that it was going into?

A Only if the adjacent land were intended for

future development.

Q You drew two plats. The first one, dated June 25, in which the fifty-foot right-of-way was split down the middle. Then you drew either the mylar or just the large subdivision sized plat that was ultimately recorded in the plat book. What do you recall the events to be leading up to moving the line from the middle of the right-of-way to where it appears on this plat in Plat Book 9 at Page 623.

A As I recall it -- and I will have to use the plat to judge the dates -- the physical survey done in March showed that the Hurd driveway, in fact, occupied the middle of the strip of land and that Colonel Hurd was interested in retaining the driveway and the walk, and that was why the line was shifted more to one side than to the other. That is to the best of my recollection.

Again, that was from a phone call with Colonel Hurd. It was just so he would not have to move. He was willing, he said, to purchase all of it if he could or whatever part he could in order to have to move the improvements.

Q Did you have any contact with the owner of Lot 32, which is on the eastern side of that right-of-way?

A No, I did not, other than on the ground. I think my people on the ground at that time -- we did,

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at the time of the time of the physical survey, go on the ground in order to locate the improvements. My people did check with the people on Lot 32 because we would have to have been on their property.

Q Do you have any recollection of a boat shed being on that area that would have been shown up on the physical survey?

A No, I don't.

Q If it had been there, you would have indicated its presence on that March survey?

A If it was of a permanent nature, yes. I'm trying to see if my physical survey notes are in here.

If there was evidence or if there was a shed of any sort in the physical survey in March of 1983, we did not show it or it was not there. If it were a permanent structure, we would have shown it.

Q When you drew the plat that is recorded in the plat book -- not the small plat, but the larger one -- showing the adjustment and the large arc going to the Hurds and the small strip going to the adjacent property, you were aware -- by putting your certification lines on there -- it had to be approved by the City of Poquoson, did you not?

A I was aware that in order to be recorded it would have had to be approved, yes.

Q You realized the City of Poquoson would rely on what you drew on there in determining whether it approved it or not, did you not?

A It has been my experience with municipalities and governments, no, they do not rely. They do review very thoroughly to satisfy their own standards. If a plat does not satisfy their standards, they don't approve it.

Q Since the city would have no knowledge of the adjoining property owners, weren't you certifying -- when you certified this plat -- that the property ownership was as shown on the plat?

A That is typically one of the things they do check. They do have knowledge by virtue of tax records and equal access to the records as we do.

As I said, generally one of our primary sources for this sort of information that we show on a plat are tax records.

Q So you are saying most likely, since it shows, "Edbar Associates Now or Formerly Edbar Estates," would have either come from a telephone conversation with one of your clients or the tax records?

A Yes.

MR. HAHN: Those are all of the questions I have.

MS. HYLTON: I have no questions.

EXAMINATION BY MR. HARRIS:

Q You don't have any title notes in your file, Roger, that would indicate you or someone in your office checked the land records, and determined from the land records the title to the adjoining property was in Edbar Estates, do you?

A No.

Q So what you are really saying is: You don't today, sitting here, know how you came into possession of whatever information resulted in your putting that notation on your plat?

A As I said earlier, at this stage, anything that I said concerning how that got there would be an assumption on my part.

Q You wouldn't disagree with me, would you, that whatever is on the plat -- I mean people look at it -- whether you call that relying on it or not, someone, a third party looking at your plat, is going to read that? Would you agree with that?

A Yes.

Q If, in fact, that location is erroneous, they are not going to know that unless they independently check it; isn't that right?

A That's true.

Q From our past association, if you had known it was erroneous, you wouldn't have put it on there, would you?

A No.

Q It is not your habit to put erroneous information on your plats, sir?

A No.

Q You wouldn't have done it on purpose, would you?

A I am surprised to see that on there now.

Q It shows your March 14, 1983 plat, the one that is not of record but that has been introduced as Exhibit D that Mr. Goldstein referred to.

A That has a habit of happening. Once again, I, myself, am guilty of relying on past plats that we have done. If an erroneous bit of information gets put on a plat, a lot of times it continues with that plat.

Q If you make a lousy form and you use the lousy form, it will repeat itself. This plat, which is Exhibit D, was this prepared subsequent to the large plat or prior?

MR. SMITH: Prior.

THE WITNESS: This was prepared prior.

BY MR. HARRIS:

Q That's what I'm getting at. So if the notation, "Now or Formerly Edbar Estates Corporation," is erroneous, the first place it showed up is on this plat, which is Exhibit D?

A Right.

Q And it was then perpetuated into the larger plat, which has not been introduced as an exhibit, but is the one that is recorded; is that right?

A That's true.

Q Today, sitting here, you don't really recall where the information came from? But had you known it was erroneous, you wouldn't have put it on there?

A That's correct.

Q Whether anybody was going to rely on it or not?

A Absolutely.

MR. HARRIS: I don't have any other questions.

THE WITNESS: At least now I know how it got on the big plat.

EXAMINATION BY MR. GOLDSTEIN:

Q You stated you were surprised when you saw that on the plat?

A In retrospect, I don't know how it got on there. In looking at the platted subdivision for Holloway

Forrest, if no adjacent ownership is shown, I generally will not show an adjacent ownership either.

Q You don't know if you drafted this? Is that your printing on either of these plats?

A This is done in pencil in my hand. This was by a draftsman, employee of ours.

Q Looking at what will be Exhibit D, is that your printing up here of Edbar Estates Corporation?

A To the best of my knowledge, yes.

Q That was in 1983 on that plat?

A March 14.

Q Do you recall if Mr. Hurd contacted you before he purchased this property from Mr. Smith?

A I have no idea as to when transactions took place. I can't answer that.

Q You do keep a log of everyone you talk to?

A We try to.

Q How long have you been doing that?

A I think our logs -- if we can find them all -- go back about seven or eight years. They may be in boxes in a shed or somewhere. We try to keep them.

Q In looking at the plat that is in Plat Book 9, Page 623, you make reference to sources of title in which you make references to the deed book and page number in Note 1 of where the Hurds acquired this property and you also

reference to a fifty-foot right-of-way that the Hurds have and then another reference. Where would you have picked these up?

A Those came to me from Colonel Hurd. I did subsequently check those, I think. Those originally came to me from Colonel Hurd in a letter, dated June 22, 1983.

Q What is that fifty-foot right-of-way about? Do you have any idea?

A I don't know where the fifty-foot right-of-way came from other than my assumption that it was a right-of-way and/or possibly the deed referred to it as a right-of-way. I can't truly testify to that.

Again, the configuration of the property would lead one to term it a right-of-way just by its shape.

MR. GOLDSTEIN: No other questions.

MR. SMITH: Does anybody else have any questions?

MR. HARRIS: I don't have any other questions.

You have the right to read the deposition, Roger, when it is typed up and sign it or you can waive your signature and rely on her accuracy. I'm not representing you.

MR. SMITH: You can waive your signature to it. She will type it up. It will be filed with the Court.

THE WITNESS: I generally would like copies.

Is that possible to have a copy?

MR. HARRIS: If you can pay for a copy and want a copy of it. Unless you waive your signature, you have to sign it if it is transcribed. You can go to her office to read it and sign it.

THE WITNESS: I don't have any reason to doubt she wouldn't report it correctly.

I waive it.

MR. SMITH: Thank you.

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REPORTER'S CERTIFICATE

[redacted]IRGINIA,

CITY OF GRAFTON, to-wit:

I, Catherine B. Edwards, a Notary Public for the State of Virginia at Large, certify that the foregoing deposition of Roger D. Spearman was duly sworn to before me and taken by me at the time and place and for the purpose in the caption mentioned.

I further certify that I am not a relative or [redacted] employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

Given under my hand this 12th day of August, 1985.

Catherine B. Edwards
Notary Public

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